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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 30

LELORD KOEDEL, PETITIONER

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 5, 1944.

CERTIORARI GRANTED APRIL 19, 1944.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

No.

LELORD KORDEL,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT

No. 9151

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

LELORD KORDEL,
Defendant-Appellant.

United States of America
vs.

Lelord Kordel

} No. 45 CR 488

United States of America
vs.

Lelord Kordel, individually and trading as
Lelord Kordel Products

} No. 45 CR 490

United States of America
vs.

Lelord Kordel, trading as Lelord Products
and Nutrition Enterprises
Lelord Kordel, Appellant

} No. 46 CR 1

TRANSCRIPT OF RECORD ON APPEAL

U. S. C. C. A.—7. Filed Aug. 28, 1946.

Kenneth J. Carrick, Clerk.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

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IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT

No. 9151

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

LELORD KORDEL,
Defendant-Appellant.

U. S. C. C. A.—7. Filed Aug. 28, 1946.
Kenneth J. Carrick, Clerk.

TRANSCRIPT OF RECORD ON APPEAL

1
United States of America
vs.
Lelord Kordel } No. 45 CR 488

United States of America
vs.
Lelord Kordel, individually and trading as
Lelord Kordel Products } No. 45 CR 490

United States of America
vs.
Lelord Kordel, trading as Lelord Products
and Nutrition Enterprises
Lelord Kordel, Appellant } No. 46 CR 1

2 PLEAS had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the City of Chicago in the Division and District aforesaid on the first Monday of June (it being the third day thereof) in the year of our Lord One Thousand Nine Hundred Forty-Six and of the Independence of the United States of America the 170th year.

Present:

Honorable John P. Barnes, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. LaBuy, District Judge
Honorable Elwyn R. Shaw, District Judge
Honorable William H. Holly, District Judge

Roy H. Johnson, Clerk

Joseph E. Tobin, Marshal

Thursday, June 27, 1946

Court met pursuant to adjournment

Present: Honorable Walter J. LaBuy, Trial Judge

3

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America

v.

Laura Kordel, an individual trading as
Gotu Kola Distributors, and
Lelord Kordel

No. 45 CR 488

BE IT REMEMBERED, that the above-entitled action was commenced by the filing of the following Criminal Information, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 11th day of July, 1945:

4

IN THE DISTRICT COURT OF THE UNITED STATES
Within and for the Northern District of Illinois
Eastern Division

• • (Caption—No. 45 CR 488) • •

J. Albert Woll, Attorney for the United States in and for the Northern District of Illinois, who for the United States in this behalf prosecutes, in his own proper person comes into Court on this 11th day of July, A. D., nineteen hundred and forty-five, and with leave of Court first had and obtained gives the Court to understand and be informed as follows, to wit:

That Laura Kordel, an individual trading under the name of Gotu Kola Distributors at Chicago, State of Illinois, and Lelord Kordel, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court on or about November 6, 1945 then and there in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331 (a)] unlawfully introduce and deliver for introduction into interstate commerce and cause to be introduced and delivered for introduction into interstate commerce from Chicago, State of Illinois, to Cincinnati, State of Ohio, consigned to Parks-Phillips Health Foods Co., a certain consignment, to-wit, a carton

containing a number of boxes each containing a number of tablets of a drug within the meaning of 21 U.S.C. 321 (g) (2);

That displayed upon the label of each of said boxes when introduced and delivered for introduction into interstate commerce and when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was the following written, printed and graphic matter, to wit:

"GOTU KOLA"

(Hydrocotyle Asiatica Fortified With Iron Sulphate)
Gotu Kola Distributors Chicago, U. S. A.

50 Tablets \$1.50

Directions: As a dietary supplement for experimental use, 1 to 3 tablets daily. In addition to furnishing 4 grains of Hydrocotyle Asiatica, each tablet supplies approximately 75% of the minimum adult daily requirement for iron derived from ferrous sulphate. The need in human nutrition for Hydrocotyle Asiatica is not established.

That displayed upon written, printed and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce and when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed circulars entitled "Does This Exotic Plant from Ceylon Hold the Answer to Man's Search for the Secret of 'Rejuvenation'?" which said circulars the defendants caused to be shipped by The Wayside Press to the said Parks-Phillips Health Food Co. via Chesapeake and Ohio Railway Co. from Mendota, State of Illinois, to Cincinnati, State of Ohio, on or about May 6, 1943, were, among others, the following statements regarding the efficacy of said drug in the cure, mitigation, treatment and prevention of diseases in man:

...

... "Gotu Kola" herb (Hydrocotyle Asiatica) ...

The results of consuming that strange, Oriental herb indicate a rich, natural, seemingly secret source of dynamic energy. And, while those primitive peoples know nothing of the whys and wherefores of the effects produced, they do know that they are very real.

After generations of experience, after ages of inti-

6 mate, first-hand knowledge, the natives of the most vigorous Singhalese tribes attribute their marvelous physique, their full, vibrant physical existence and their philosophical outlook on life solely to their precious "Gotu Kola." And their conclusions are fully supported by European and American travelers, explorers, scientists, and writers—some of whom have discovered native "Gotu Kola" enthusiasts claiming to be over 100 years of age who appear but 65 or 70.

Vincent de Silva, writing in the Ceylon Daily News, has the following to say about "Gotu Kola":

"Man's dream has always been to discover the secret of perpetual youth, and many men have devoted all their lives to this problem.

"We have heard of Ponce de Leon who sought restoration of youth from the waters of a charmed fountain in Florida; the Nintan of the Chinese; the Red Elixir of Cebor, and the Vital Essence of Augsburg. Not so long ago a Swiss named Spalinger claimed to have found a serum which prolonged life to a hundred and fifty years.

"Instead of believing that the secret of perpetual youth could be thus obtained, they should have tracked an elephant in the wilds of Ceylon and observed what the behemoth ate for his lunch. Ten chances to one it would have been 'Gotu Kola'. Had they done this, the world would be growing this life-giving plant as commonly as lettuce and there might not be on earth, today, any one with a body that could truthfully be termed senile.

**** It was known to writers of India and Ceylon, *** as a longevity plant. ***

"It is claimed that this herb will increase the vitality of 70 and 80 to that of 40. The leaves have a marked energizing effect on the cells of the brain, and can preserve it indefinitely.

"Baron Cogern, the scientist, tells us that an old elephant, in captivity at Deshapur, was once rejuvenated and bore a calf after 'Gotu Kola' was sent for and mixed in her diet. A few of the leaves eaten every day will strengthen and re-vitalize worn-out bodies and brains to a remarkable degree and will prevent brain fog and nervous breakdown.

"To realize the truth of these assertions, it is only necessary to look back a few hundred years into the medical history of the East.

"Two leaves a day will keep old age away.' This is the claim made by the ancient Singhalese for 'Gotu Kola', this famous longevity plant, which grows in Ceylon. In India, the leaves are extensively used by religious orders to develop spiritual power, and to prolong the existence of the brain.

"Mary E. Forbes of America, the tutor to Her Highness, the widowed Queen of Kandi State in the Punjab, commenced eating 'Gotu Kola'; after a few months she never knew what brain fatigue was, and felt so physically well that she could not find enough to do to use up her energy."

The Singhalese almost worships 'Gotu Kola.' He swears by its beneficence, desiring it above all other foods to an almost fanatical degree. This extraordinary tribute to 'Gotu Kola' is fully corroborated by some European authorities, who have known the facts for years.

The men who brought "Gotu Kola" to America know its effects from personal experience, and it is only in the same way that others can come to know them.

...

... The person who has an opportunity to procure a supply of this herb should consider himself an individual upon whom the gods smile benignly.

What is there about this herb that inspires such avid desire? What precious gift has Nature locked within "Gotu Kola"?

Nature has taught us to outfly the bird, outswim the fish and outspeed the deer—shall we then doubt that in her resources she holds for our discovery the secret of perfect physical life that she has revealed to these? ... Is it then too much to expect that she will reveal to us her formula for more abundant power and more perfect living?

Have we found it in "Gotu Kola"; in this plant from the jungle? The testimony of beasts and birds, of the natives and wise men of Ceylon and India and of a host of scientific and lay people of Europe and America seems to indicate to a reasoning mind that possibly we have.

"How precious is life? Though today be twenty-four hours of misery, "hope springs eternal in the human breast" and we carry on, ever looking for a brighter tomorrow, in which we shall enjoy a fuller, richer physical existence.

For those fortunate enough to obtain it—a brighter tomorrow may lie in "Gotu Kola." As countless others have found brighter days in the indefinable "something" which their systems apparently drew from "Gotu Kola." The outward manifestations are evidenced by a general enhancement of the physical life, a brighter, keener mental activity, a restimulated ambition and a renewed optimistic outlook.

Those who are below par physically and mentally—and who have the opportunity to determine what "Gotu Kola" may mean to them, will better appreciate the words of a noted scientist in describing natives of Ceylon to whom this plant is available:

"I wish you could see these wonderful people, with their erect posture, their sharp eyes and velvety skin. Their limbs are as if carved from ebony, of splendid proportion, their chests deep, their bodies firm, with gracefully curved hips and flat abdomens. The rhythm of their motions; their gracefulness and poise, their stately bearing, the intelligence of their eyes and their pleasing laughter all show them blessed with an extraordinary physique."

... one tablet daily is usually sufficient for those who are willing to experiment for themselves with "Gotu Kola".

We quote again from Vincent de Sylva's article:

8 "It is the belief of the Singhalese and the Indians also, that only a few leaves of this herb are necessary, daily, to bring about a gradual return to health and strength, provided the body is exposed to the sun. If this is eaten daily, it is said, that disorders like rheumatism, neuritis and nervous breakdown could be banished entirely from the constitution—and would be an important factor in breeding a better race. It is claimed that 'Gotu Kola' will increase the span of life by 50 years, developing a brain incapable of breaking down for a very long time."

. . .

That said drug when introduced and delivered for introduction into interstate commerce and when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid; was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)] in that the aforesaid statements appearing in said circulars were false and misleading in that said *statements represented and suggested and created in the mind of the reader the impression* that Hydrocotyle Asiatica, of which the common or usual name is Indian pennywort, was a rich, natural seemingly secret source of dynamic energy, and that the drug Gotu Kola would be effective in producing marvelous physique and full, vibrant physical existence, and would be effective in prolonging life, perpetuating and restoring youth, increasing vitality, and would have an energizing effect on the cells of the brain and preserve it indefinitely, and that said drug would be effective in strengthening and re-vitalizing worn-out bodies and brains, and would prevent brain-fog and nervous breakdown, and would keep old age away and would prolong the existence of the brain, and would be effective in producing energy, and would be effective in producing a perfect physical life, more abundant power and more perfect living, and would be effective in producing a fuller, richer physical existence, and would generally enhance physical life, manifest a brighter, keener mental activity, a restimulated ambition and a renewed optimistic outlook, and would be effective in treatment of those below par physically and mentally, and would be effective in producing erect posture, sharp eyes, velvety skin, limbs of splendid proportion, deep chests,

9 firm bodies, gracefully curved hips, flat abdomens, rhythm of motion, gracefulness and poise, stately bearing, intelligence of eyes, pleasing laughter, extraordinary physique, and would be effective in the treatment of rheumatism, neuritis, and nervous breakdown whereas in fact and in truth Hydrocotyle Asiatica, of which the common or usual name is Indian pennywort, was not a rich, natural seemingly secret source of dynamic energy, and that the drug Gotu Kola would not be effective in producing marvelous physique and full, vibrant physical existence, and would not be effective in prolonging life, perpetuating and restoring youth, increasing vitality, and would not have an energizing effect on the cells of the

brain and preserve it indefinitely, and that said drug would not be effective in strengthening and re-vitalizing worn-out bodies and brains and would not prevent brain-fog and nervous breakdown, and would not keep old age away and would not prolong the existence of the brain, and would not be effective in producing energy, and would not be effective in producing a perfect physical life, more abundant power and more perfect living, and would not be effective in producing a fuller, richer physical existence, and would not generally enhance physical life, manifest a brighter, keener mental activity, a restimulated ambition and a renewed optimistic outlook, and would not be effective in treatment of those below par physically and mentally, and would not be effective in producing erect posture, sharp eyes, velvety skin, limbs of splendid proportion, deep chests, firm bodies, gracefully curved hips, flat abdomens, rhythm of motion, gracefulness and poise, stately bearing, intelligence of eyes, pleasing laughter, extraordinary physique, and would not be effective in the treatment of rheumatism, neuritis, and nervous breakdown;

All of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

J. Albert Woll,
United States Attorney for the
Northern District of Illinois.
(Station Chief)

U. S. vs. Laura Kordel, trading as Gotu Kola Distributors, and Lelord Kordel.
F.D.C. No. 14307.
Sample No. 49028-F

State of Illinois }
County of Cook } ss.
City of Chicago }

Before me, Elsie S. Burke, an employee of the Federal Security Agency, Food and Drug Administration, designated by the Federal Security Administrator, under authority of the Act of January 31, 1925, c.124, Sec. 1, 43 Stat. 803, and Reorganization Plan No. IV, Sec. 12-15, effective June 30, 1940, to administer or take oaths, affirmations, and affidavits, personally appeared Malcolm R. Stephens, in the city, county, and state aforesaid, who



being first duly sworn, deposes and says: "I am an employee of the United States Government and am Chief of the Chicago Station of the Food and Drug Administration, Federal Security Agency, which Agency is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act; that records on file in the said Food and Drug Administration, identified as 49028-F, and which I have examined, show that on or about November 30, 1943, a duly authorized inspector of the Food and Drug Administration collected from a dealer located at Cincinnati, Ohio, a sample of tablets, together with a circular entitled "An Amazing Message for:", the said sample of tablets being labeled, in part, as follows: (on carton) "Gotu Kola" • • •; (a small yellow insert in carton) headed: "This coupon entitles you to a Free Subscription to 'Health Today'"; that at the time of such collection, the dealer in possession of the goods and circular sampled, signed or there was signed on its behalf by someone who know the facts, an affidavit evidencing that the sample of tablets so collected consisted of goods shipped to the said dealer by Gotu Kola Distributors, at Chicago, Illinois, and an affidavit evidencing that the circular so collected was taken from a stock of the said literature shipped to the said dealer by the Wayside Press, Mendota, Illinois, and at the same time there was delivered to the said inspector documentary evidence of such transportation of said tablets and printed matter.

The said records also show that on or about January 10, 1944, a duly authorized inspector of the Food and Drug Administration, collected from the said dealer a copy of a booklet entitled "• • • Health Today Edited by Lelord Kordel," which the owner of the said dealer-firm identified to him as being a part of a shipment received by him from the Wayside Press, Mendota, Illinois, and subsequently the said inspector obtained and submitted documentary evidence of such transportation of said printed matter.

The records also show that the said dealer-firm indicated to the said inspectors at the time of making the above-mentioned collections, that the literature, including the circular "An Amazing Message for" and the booklet, "• • • Health Today Edited by Lelord Kordel" was mailed out by said firm to prospective customers.

The records further show that the said sample of tablets, above-mentioned, was analyzed by a duly authorized analyst

of the Food and Drug Administration, who reported that the product consists of white sugar, and lime carbonate coated tablets, containing chiefly pennywort, iron sulfate, calcium sulfate, and tale.

Malcolm R. Stephens (Signed)

Chief, Chicago Station, Food and Drug Administration, Federal Security Agency.

Subscribed and sworn to before me, at Chicago, Illinois, this 13th day of April, 1945.

Elsie S. Burke (Signed)

Employee of the Federal Security Agency, designated under the Act of Jan. 31, 1925, and Reorganization Plan IV, effective June 30.

12

(Medical Officer)

U. S. vs. Laura Kordel, trading as Gotu Kola Distributors, and Lelord Kordel.

F.D.C. No. 14307.

Sample No. 49028-F.

City of Washington }
District of Columbia } ss.

Before me, Anselma M. Stein, an employee of the Federal Security Agency, Food and Drug Administration, designated by the Federal Security Administrator, under authority of the Act of January 31, 1925, c. 124, sec. 1, 43 Stat. 803, and Reorganization Plan No. IV, secs. 12-15, effective June 30, 1940, to administer or take oaths, affirmations and affidavits, personally appeared Lawrence E. Putnam, in the City and District aforesaid, who, being first duly sworn, deposes and says: That he graduated from Harvard Medical School (1934) with M. D. degree; interned at Peter Bent Brigham Hospital (1935-1936); interned at Beth Israel Hospital (1936-1938; First Lieutenant, Medical Reserve, United States Army (1938-1939); Associate Medical Officer, Veterans Administration (1939-1941); Medical Officer in the Food and Drug Administration since January 2, 1941.

I have examined the reports of analyses of the product designated in the records of this Agency as 49028-F, and labeled in part "Gotu Kola . . .", made by Leon E. Wener and George L. Keenan which showed said product to consist of white sugar and lime carbonate coated tablets, con-

taining chiefly pennywort, iron sulfate, calcium sulfate, and talc.

Affiant states that *Hydrocotyle Asiatica*, of which the common or usual name is Indian pennywort, is not a rich, natural seemingly secret source of dynamic energy.

Affiant further states that the composition of the product as shown by the foregoing analyses is such that said drug would not be effective in producing marvelous physique and full, vibrant, physical existence, and would not be effective in prolonging life, perpetuating and restoring youth, increasing vitality, and would not have an energizing effect on the cells of the brain and preserve it indefinitely, and said drug would not be effective in strengthening and revitalizing worn-out bodies and brains and would not prevent brain-fog and nervous breakdown, and would not keep old age away and would not prolong the existence of the brain, and would not be effective in producing energy, and would not be effective in producing a perfect physical life, more abundant power and more perfect living, and would not be effective in producing a fuller, richer physical existence, and would not generally enhance physical life, manifest a brighter, keener mental activity, a restimulated ambition and a renewed optimistic outlook, and would not be effective in treatment of those below par physically and mentally, and would not be effective in producing erect posture, sharp eyes, velvety skin, limbs of splendid proportion, deep chests, firm bodies, gracefully curved hips, flat abdomen, rhythm of motion, gracefulness and poise, stately bearing, intelligence of eyes, pleasing laughter, extraordinary physique, and would not be effective in the treatment of rheumatism, neuritis, and nervous breakdown.

13 Affiant further states that his opinion represents the consensus of present day reliable medical opinion.

Lawrence E. Putnam (Sgd.)

Medical Officer, U. S. Federal Security Agency.

Subscribed and sworn to before me, at Washington, D. C., this 8th day of June, 1945.

Anselma H. Stein (Sgd.)

Employee of the Federal Security Agency, designated under Act of January 31, 1925, and Reorganization Plan IV effective June 30, 1940.

14 No. 45 CR 488. In the District Court of the United States, for the Northern District of Illinois, Eastern Division. United States of America vs. Laura Kordel, an individual trading as Gotu Kola Distributors, and Lelord Kordel. Criminal Information: Violation of Section 331(a), Title: United States Code. (Introduction and delivery for introduction into interstate commerce of drug which was misbranded.) J. Albert Woll, United States Attorney. Filed July 11, 1944, Roy H. Johnson, Clerk.

15 And on the same day, to wit, on the 11th day of July, 1945, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

16

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Wednesday, July 11, 1945.

Present: Honorable William J. Campbell, District Judge.

• • (Caption—No. 45 CR 488) • •

On motion of the United States Attorney it is ordered that leave be and is hereby given to file Criminal Information against Laura Kordel, an individual trading as Gotu Kola Distributors and Lelord Kordel the defendants herein and

It is further ordered that bench warrants issue for the defendants and that the bonds of the defendants be and the same are hereby fixed at the sum of One Thousand Dollars (\$1,000.00) each.

14

Order

17 And afterwards, to wit, on the 16th day of July, 1945 being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

18

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Monday, July 16, 1945.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488) • •

On motion of the defendants Laura Kordel and Lelord Kordel

It is ordered that the bonds of said defendants be and the same are hereby reduced to the sum of Five Hundred Dollars (\$500) each.

19 And afterwards, to wit, on the 24th day of September, 1945, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

20

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Monday, September 24, 1945.

Present: Honorable Walter J. La Buy, District Judge.

• • (Caption—No. 45 CR 488) • •

By agreement of the parties to this suit now made in open Court

It is ordered that this cause be and the same is hereby re-set to October 24, A. D. 1945 at 10:00 o'clock A. M. for arraignment and plea as to the defendants Lelord Kordel and Laura Kordel.

21 And afterwards, to wit, on the 24th day of October, 1945, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

22

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Wednesday, October 24, 1945.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488). • •

By agreement of the parties to this suit now made in open Court

It is ordered that this cause be and the same is hereby re-set to November 29, A. D. 1945 at 10:00 o'clock A. M. for arraignment and plea.

23 And afterwards, to wit, on the 29th day of November, 1945, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

24

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Thursday, November 29, 1945.

Present. Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488). • •

By agreement of the parties to this suit now made in open Court

It is ordered that this cause be and the same is hereby re-set to January 5, A. D. 1946 for arraignment and plea.

25 And afterwards, to wit, on the 4th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

26

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Friday, January 4, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488) • •

It is ordered by the Court that this cause be and the same is hereby re-set for arraignment and plea from January 5, A. D. 1946 to January 7, A. D. 1946 at 10:00 o'clock A. M.

27 And afterwards, to wit, on the 7th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

28

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Monday, January 7, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488) • •

• On motion of the defendants

It is ordered that this cause be and the same is hereby continued to January 14, A. D. 1946 for arraignment and plea.

29 And afterwards, to wit, on the 14th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

30

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Monday, January 14, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

* * (Caption—No. 45 CR 488) * *

On motion of the defendants

It is ordered that this cause be and the same is hereby continued for arraignment and plea to February 14, A. D. 1946.

31 And afterwards, on the same day to wit, on the 14th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

32

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Monday, January 14, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

* * (Caption—No. 45 CR 488) * *

On motion of Attorneys Albert I. Kegan, Esther O. Kegan, Kegan and Kegan, John A. Nash and Nash & Donnelly

It is ordered that leave be and it is hereby given to said attorneys to withdraw their appearance herein as attorneys for defendants and

It is further ordered that leave be and it is hereby given to James W. Breen, Esq., to enter his appearance herein in lieu thereof.

33 And afterwards, to wit, on the 14th day of February, 1946, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry to wit:

34

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Thursday, February 14, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488) • •

This day comes the United States by the United States Attorney, come also the defendants Laura Kordel, an individual trading as Gotu Kola Distributors and Lelord Kordel each in his own proper person and by his counsel and being arraigned upon the Criminal Information filed herein against them plead not guilty thereto, and

It is ordered that this cause be and the same is hereby set for trial on March 18, A. D. 1946.

35 And afterwards, to wit, on the 18th day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

36

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Monday, March 18, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488) • •

On motion of the United States by the United States Attorney

It is ordered that this cause be and the same is hereby consolidated with Causes Numbered 46 CR 1 and 45 CR 490

for trial the consolidated cause to proceed under the title of United States of America vs. Laura Kordel, an individual trading as Gotu Kola Distributors and Lelord Kordel, Lelord Kordel trading as Lelord Kordel Products, Lelord Kordel trading as Lelord Kordel Products and Nutrition Enterprises, Number 45 CR 488, consolidated cause.

37 And be it remembered, that on, to wit, the 13th day of July, 1945, there was filed in the Clerk's office of said Court a certain Criminal Information, in the cause entitled: United States of America v. Lelord Kordel, trading as Lelord Kordel Products, No. 45 CR 490, in words and figures following, to wit:

38.

IN THE DISTRICT COURT OF THE UNITED STATES

Within and for the

Northern District of Illinois

• • (Caption—No. 45 CR 490) • •

J. Albert Woll, Attorney for the United States in and for the Northern District of Illinois who for the said United States in this behalf prosecutes, in his own proper person comes into Court on this 13th day of July, A. D., 1945, and with leave of Court first had and obtained gives the Court to understand and be informed as follows, to-wit: -

That Lelord Kordel, an individual trading as Lelord Kordel Products at Chicago, Illinois, did, within the Northern Judicial District of Illinois and within the jurisdiction of this Court on or about January 18, 1944 then and there in violation of the Act of Congress known as Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)] unlawfully introduce and deliver for introduction into interstate commerce, via Railway Express Agency, from Chicago, State of Illinois to Seattle, State of Washington, consigned to Dr. McCormick's Natural Foods Co., 1918 Third Ave., Seattle, Washington, a certain consignment, to wit, a carton containing among other things, a number of boxes each containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon the label of each of said boxes when introduced and delivered for introduction into interstate commerce as aforesaid, was the following written, printed and graphic matter, to wit:

39

Formerly sold as "Caps".

Minerals

Plus Chlorophyll and Vitamin D

Contains dicalcium phosphate, iron sulphate, irradiated yeast, potassium iodide, chlorophyll, alfalfa, sulphates of copper, cobalt, manganese, zinc, magnesium and nickel, magnesium trisilicate, lithium lactate, chlorides of sodium, potassium, barium and strontium, sodium borate, sulphur, and excipients to properly prepare.

100 Tablets \$1.00

Lelord Kordel Products

Exclusive Distributors Chicago.

Minerals

Plus Chlorophyll and Vitamin D

Six Tablets Daily Furnish

Calcium	750 Milligrams
Phosphorous	580 Milligrams
Iron	30 Milligrams
Iodine	0.2 Milligrams
Copper	150 Micrograms
Vitamin D.....	600 U.S.P. Units
Chlorophyll	9 Milligrams

Plus 1 Milligram of each of the following:

*Manganese, Cobalt, Sodium, Sulphur, Potassium, Chlorine—daily requirements for which have not been established. Plus: **Magnesium, Zinc, Nickel, Lithium, Boron, Strontium, Silicon, Barium—the need for which in human nutrition has not been established.

Directions: Six tablets furnish the following percentages of the minimum daily adult requirements: Calcium, 100%; Phosphorous, 75%; Iron, 300%; Iodine, 200%; Vitamin D, 150%. Tablets may be chewed or swallowed whole, or crushed and added to fruit juices, milk, or other foods. In special cases, use as directed by physician.

That displayed upon written, printed and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, namely upon a number of printed booklets entitled, "What

You Can Do About Relieving The Agonies of Arthritis" which said circulars were shipped in the aforesaid carton together with said drug, were among others the following statements regarding the efficacy of said drug in the cure, mitigation, treatment, and prevention of arthritis, a disease in man:

40

What you can do about relieving the agonies of arthritis ***

Practical and helpful advice for the millions who suffer from arthritis. *** you may use diet and vitamins *** to help speed relief and make life pleasanter for yourself.

Relieving the agonies of arthritis

*** Rivalling heart disease and cancer as a thing to be dreaded, arthritis stands near the head of the list of American afflictions. ***

Known variously as arthritis deformans, rheumatoid arthritis, atrophic arthritis and infectious arthritis—to mention only a few aliases—this is the joint affection which is characterized, in its more advanced stages, by swelling and deformity of the joints, accompanied by some degree of immobility. Its symptoms are easily recognized by those who know them, but, unfortunately, many people take them for mere momentary twinges and ignore their warning. This, incidentally, is one of the reasons for the great prevalence of arthritis in our country today. The American fault of putting off actions until driven to it—our grasshopper complex—is to blame for the number of bedridden arthritics.

This type of arthritis starts off with such a twinge in the joints—usually in the hands, but sometimes in the knees. But the unfortunate human race is, apparently, used to taking such pains for granted as an integral part of their existence. So they pay no attention. Over a period of weeks, months, or even years, the pains get progressively worse, spreading to other joints and becoming more and more persistent. Then, when the sufferer can no longer stand it, he goes to a physician, only to find that treatment is now a long and patience-trying task. Had the disease been caught

at its inception, things would have been much easier and complete recovery more assured.

...

It used to be considered that all arthritis was caused by focal infections in the body: teeth; tonsils, appendix and so on were all looked at askance, and promptly removed. At present, however, benefitting from the experience of such wholesale but often unsuccessful operative treatment, we look elsewhere for causes. And immediately improper diet comes to light; underweight, overweight, anemia, toxemia and acid condition of the blood have all been found to be important contributing factors.

...

But, getting back to the dietary causes, we find a greater abundance of factors, and ones that are not so much subject to conjecture. Here we find many of the arch villains in our life today: sweets, condiments, coffee, tea, alcohol and tobacco. With arthritis, carbohydrates such as contained in candies and other sweet things should be avoided like the plague; all spicy foods, too, must be omitted from the diet. It goes without saying that alcohol and tobacco—both of which are blood toxicants—must be eschewed. For this acid condition of the blood is one of the main contributing factors in cases of arthritis. Certainly, purity of the blood stream has been preached for so long now that it is surprising that one has to go on talking about it. And coffee¹ is another thing which leads
41 to such a state—particularly if drunk with cream and sugar; for the caffeine contained therein, if consumed to excess, is converted into uric acid, which in turn affects the blood when present in quantities.

Starch foods are another thing to be done away with in the treatment of arthritis, as they also leave an acid ash. Thus, one finds that in combatting arthritis, it is essential to change the diet from one of acid-forming to alkaline-forming foods.

Still another cause of rheumatoid arthritis has been

¹ Instead of coffee, drink Lelord Kordel's Sarsaparilla Tea. All health food stores carry it. If you must drink some coffee—and arthritics shouldn't—learn to drink it without sugar or cream, and add a few drops of lemon juice to it in order to neutralize harmful elements.

found perhaps one of the most important factors among the many given: disturbed nutritional metabolism which is brought about by a deficiency of calcium phosphorus, and vitamin D and other essential minerals. As the calcium and phosphorus have been taken from other parts of the body to build up the calcareous deposit between the two bones that form the joint, there is an uneven distribution of the two elements in the rest of the body. The other bones and the blood have been deprived by nature of their calcium in order to bring about immobility—hence some supposed degree of ease—in the grating joint, and this must be re-introduced by the consumption of calcium—and phosphorus-bearing foods.² ***

Lack of vitamin C has been claimed, by some authorities, to have a bearing on arthritis cases. This, too, affects the bone development, and provides increased resistance to infection, so it is an important element in the course of treatment.

*** Since anemia is another thing to be considered when trying to overcome arthritis, *** An iron-rich supplement is also recommended.³

One of the most effective preparations for a dietetic treatment of arthritis is to stop eating entirely for a while. This may sound ambiguous, but it is entirely sensible when you pause to consider the benefits to be derived therefrom! A day of fast completely frees the body of accumulated poisons and gives the specific arthritis diet clear ground in which to work.

So, with this in mind, the first step is to take a small dose of a *mild* laxative⁴ when you go to bed the night before the day of fasting. Taken with plenty of water; this flushes out all extraneous matter from the colon, but does not panic the peristaltic muscles.

The following day, absolutely nothing should be taken into the system except pure distilled water. Drink as

² For a reliable source of calcium-phosphorous-Vitamin D, try MINERALS-PLUS—which contains the two minerals mentioned PLUS 17 others in addition to Vitamin D and Chlorophyll.

³ FERRO-B-PLEX is an excellent iron-rich B-Complex supplement.

⁴ BoLAX is recommended when you feel the need for a mild, yet not harsh laxative. Insist on getting BoLAX, and refuse substitutes!

much of it as you can—a glass every hour. As it is distilled, it will gather up the unwanted impurities and undesirable mineral matter in the body. But, as a great deal of calcium and other minerals will be excreted during the course of the day, it is best that you take at least six concentrated mineral tablets. This will preclude the loss of the minerals that are so valuable to the arthritic person. That night, again take some of the mild laxative, and get plenty of sleep.

*** Here is the procedure for the *Juice Purifying Diet: Night before: Two BoLAX Tablets.*

Before retiring: Two BoLax Tablets.

42 This is both a good way to continue the purifying of the intestinal tract and a method by which the complete fast may be tapered off. For the liquid part of it will continue to flush the colon, carrying away what impurities have managed to linger; yet the nutritive qualities of the fruits will benefit the system that has had no food without over-taxing the organs for whose benefit you started the fast: the stomach, liver and so forth. What's more, it has the highly desirable effect of alkalizing the system, a consummation devoutly to be wished in the treatment of arthritis. This, too, should be followed by the mild laxative upon retiring.

Then, for a week, you continue the process of gradually breaking your fast by eating nothing but citrus fruit, apples, figs, pineapple, peaches, dates, berries—any fruit, in fact, except bananas. And continue to drink only distilled water, so as to get no elements other than those contained in the fruits themselves. This regime changes the intestinal flora, which is very beneficial in arthritis, and gives you more solid nourishment in preparation for a balanced diet. Needless to say, each night you should take the mild laxative in small doses.

The next step in your program is to aid nature in stimulating the healing processes of the body. Without rapid healing, quick return to normal health is not easily possible. The *Victory Healing Diet* was designed to help accelerate the body's healing mechanism. Here is the procedure, to be followed to the letter for five days—less than five days will not give you the

results you want; more than five days is a waste of time.

Upon arising: Cup of Lelord Kordel's Fenugreek treated Sarsaparilla Tea (or mint tea); 6 Fero-B-Plex tablets.

...
Before retiring: Cup of Lelord Kordel's Fenugreek Tea and two BoLax tablets. This is very important!

Care must be taken that sufficient vitamins are provided. Vitamin A—the anti-infection one—ought to be taken in large quantities, as it seems to help a great many cases of arthritis, particularly if they are such as have started from some focal infection like sinus trouble. Even more important are B, C and D.

B—which is of benefit in any sort of infection, and particularly if it happens to be in the intestinal tract (arthritis is certainly partly due to a toxic state of the intestines)—should be included. This can be derived from peas, lima beans, wheat germ, yeast, soybeans, whole grains and egg yolks. It is also found, to a large extent, in cabbage, carrots and tomatoes. Vitamin B Complex tablets are also recommended.

... But fresh fruits and vegetables often do not furnish all the Vitamin C needed by the arthritic. If you think you are not getting enough vitamin C, we suggest a vitamin C concentrate in tablet form. An excellent one is called "Cetabs".

... plenty of vitamin D should be taken in order to enable the body to absorb the calcium which is to make up the deficiency characteristic of rheumatoid arthritis.

While on the subject of calcium, it is best to list those foods which are richest in it:

Minerals-Plus ...

...
Thus the diet for arthritis is one in which all de-vitalized products are conspicuous by their absence.

... Also, the arthritic should remember to drink a great deal of celery and cucumber juice during the course of each day—... This cocktail has the desirable property of being able to act as a solvent on the cal-

careous deposits which have been formed between the two bones of the affected joints, thus facilitating the return of motion. It is also wise to drink the juice of a fresh lime in a glass of distilled water every time you are thirsty. This is a good specific for arthritis.

- 43 As the arthritic is forbidden meat protein *** On the whole, though the diet emphasizes the alkaline fruits and vegetables, as can be seen by the following suggested skeleton menus which the patient can use:

Afternoon: *** an herb tea like Lelord Kordel's Fenugreek Tea.***

Before retiring: *** Cup of strong Fenugreek Tea. *** Such a program as has been outlined in this booklet, however, has been found to be most efficient in a great number of cases, and there is no reason to suppose that it won't do you a lot of good if followed faithfully.

Important! Many arthritics have reported wonderful results by using an herb tea that seems to be a splendid specific in helping arthritis and other rheumatic ailments. A cup should be drunk every other night—before retiring. Here is how to make this herb tea: Take one level tablespoonful of Fenugreek Tea and one level teaspoonful of black Cohosh Root. Steep for 5 minutes in a cupful of boiling hot water. Strain. Sweeten with a teaspoonful of uncooked orange blossom honey; add a teaspoonful of lemon juice. Drink while still quite warm.

Upset Stomach?

Sour taste in mouth? Belching? Gas pains? Liver, Intestinal Irritations? on a Colitis or Ulcer Diet?

Try for amazing relief with Fenugreek tea.

Fenugreek Tea *** not a drug!

*** Fenugreek Tea is "A cup of good health from the good earth." *** helping to eliminate the poisons that foster stomach troubles. It acts quickly to stop gas pains, sourness and belching: *** It often tends to make your liver more active and to clear away the old bile from your system.

Fenugreek Tea helps bring out gases and impurities which may have been inside you a long time. It will aid greatly in cleansing your bowels as they were never cleansed before—(gradually, not drastically or severely). It will help make your digestive organs sweet and clean.

If your physician has placed you on an ulcer or colitis diet, you'll enjoy the soothing effects of Fenugreek Tea. ...

(Picture of stomach) The stomach lining is a series of small pits. Impurities cling in these pits, often causing serious disorders. The regular use of Fenugreek Tea will often help to cleanse these impurities.

(Picture of intestinal tract) Headaches, backaches, and that tired-out feeling are often caused by toxic poisons that may enter the blood stream because of pockets of impurities in the intestinal tract. Use Fenugreek Tea daily.

(Picture of liver) The liver, when sluggish and inactive, slows down the "bile flow," causing headaches and lack of energy. Instead of using often harmful "liver pills" try Fenugreek Tea—it's a natural herb product!

(Picture of kidney) Impurities (acid and slime deposits) in kidneys are common causes of rheumatic and neuritis pains and general physical debility. 15 miles of tubing form the kidneys: try cleansing with Fenugreek! ...

Fenugreek Tea—An excellent herb for cleaning out the stomach—retarding intestinal fermentation and gas formation. ...

44 That said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)] in that the aforesaid statements appearing in said booklets were false and misleading in that said statements represented and suggested and created the impression in the mind of the reader that said drug when taken alone or in combination with other drugs mentioned in said booklet, to wit: "Lelord Kordel's Sarsaparilla Root," "Fero-B-Plex," "BoLax," "Lelord Kor-

del's Fenugreek," "Cetabs" or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas in truth and in fact said drug when taken alone or in combination with said other drugs mentioned in said booklet, or with the diets recommended in said booklets would not be effective in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II

And the said Attorney for the United States in manner and form as aforesaid, also gives the Court here to understand and be informed as follows, to wit:

That Lelord Kordel, an individual trading as Lelord Kordel Products at Chicago, Illinois, did, within the Northern Judicial District of Illinois and within the jurisdiction of this Court on or about January 18, 1944 then and there in violation of the Act of Congress known as Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)] unlawfully introduce and deliver for introduction into interstate commerce, via Railway Express Agency from Chicago, State of Illinois to Seattle, State of Washington, consigned to Dr. McCormick's Natural Foods Co., 1918 Third Ave., Seattle, Washington, a certain consignment, to wit, a carton containing among other things, a number of packages each containing a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon the label of each of said packages when introduced and delivered for introduction into interstate commerce as aforesaid, was the following written, printed and graphic matter, to wit:

Lelord Kordel's
Specially-Treated*
Sarsaparilla Root U.S.P.
*with Sassafras Bark.
1¾ Oz. Net*Price 50¢
Lelord Kordel Products
Russ Building • San Francisco
Sarsaparilla Root

has long been used in place of ordinary tea by dis-

eliminating persons who prefer this mild, very delicate taste.

Directions: To make a delicious and refreshing beverage, use one to one-and-a-half teaspoonfuls for each cup of rapidly boiling water. Steep 5 minutes. Strain. May be sweetened with honey to taste. A few drops of lime or lemon juice may be used.

That displayed upon written, printed and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving The Agonies of Arthritis" which said circulars were shipped in the aforesaid carton together with said drug, were among others the statements regarding the efficacy of said drug in the cure, mitigation, treatment, and prevention of arthritis, a disease in man, appearing in the circular more fully described in the First Count of this information, which description of said circular in said First Count is by reference hereby incorporated in this Count;

That said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, was

46 then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)] in that the aforesaid statements appearing in said booklets were false and misleading in that said statements represented and suggested and created the impression in the mind of the reader that said drug when taken alone, or in combination with other drugs mentioned in said booklet, to wit, "Lelord Kordel's Fenugreek Tea," "Fero-B-Plex," "Bolax," "Cetabs," "Minerals Plus Chlorophyll and Vitamin D," or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas in truth and in fact said drug when taken alone or in combination with said other drugs mentioned in said booklet, or with the diets recommended in said booklets would not be effective in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT III

And the said Attorney for the United States in manner and form as aforesaid, also gives the Court here to understand and be informed as follows, to wit:

That Lelord Kordel, an individual trading as Lelord Kordel Products at Chicago, Illinois, did, within the Northern Judicial District of Illinois and within the jurisdiction of this Court on or about January 18, 1944 then and there in violation of the Act of Congress known as Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)] unlawfully introduce and deliver for introduction into interstate commerce, via Railway Express Agency from Chicago, State of Illinois to Seattle, State of Washington, consigned to Dr. McCormick's Natural Foods Co., 1918 Third Ave., Seattle, Washington, a certain consignment, to wit, a carton containing among other things, a number of packages each containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

47 That displayed upon the label of each of said packages when introduced and delivered for introduction into interstate commerce as aforesaid, was the following written, printed and graphic matter, to wit:

Cetabs

Each tablet contains not less than 600 U.S.P. units Vitamin C (30 mg. ascorbic acid) and necessary excipients.

30 coated tablets—\$1.00.

Distributed by Lelord Kordel Products—Chicago.

One tablet furnishes the full minimum daily adult requirement for Vitamin C, which is 600 U.S.P. units. Where an actual Vitamin C deficiency is known to exist, larger amounts may be taken as directed by your physician. Tablets may be chewed or swallowed whole, or crushed and added to fruit juices, milk, or other foods.

That displayed upon written, printed and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving The Agonies of Arthritis" which said circulars were shipped in the aforesaid carton together with said drug, were among others the statements regarding the efficacy of said drug in the cure, mitigation,

treatment, and prevention of arthritis, a disease in man, appearing in the circular more fully described in the First Count of this information, which description of said circular in said First Count is by reference hereby incorporated in this Count:

That said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)] in that the aforesaid statements appearing in said booklets were false and misleading in that said statements represented and suggested and created the impression in the mind of the reader that said drug when taken alone, or in combination with other drugs mentioned in said booklet, to wit, "Lelord Kordel's Fenugreek Tea," "Fero-B-Plex," "Bolax," "Lelord Kordel's Sarsaparilla Root," "Minerals Plus Chlorophyll and Vitamin D," or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas in truth and in fact said drug when taken alone or in combination with said other drugs mentioned in said booklet, or with the diets recommended in said booklets would not be effective in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT IV

And the said Attorney in the United States in manner and form as aforesaid, also gives the Court here to understand and be informed as follows, to wit:

That Lelord Kordel, an individual trading as Lelord Kordel Products at Chicago, Illinois, did, within the Northern Judicial District of Illinois and within the jurisdiction of this Court on or about January 18, 1944 then and there in violation of the Act of Congress known as Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)] unlawfully introduce and deliver for introduction into interstate commerce, via Railway Express Agency from Chicago, State of Illinois to Seattle, State of Washington, consigned to Dr. McCormick's Natural Foods Co., 1918 Third Ave., Seattle, Washington, a

certain consignment, to wit, a carton containing among other things, a number of packages each containing a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon the label of each of said packages when introduced and delivered for introduction into interstate commerce as aforesaid, was the following written, printed and graphic matter, to wit:

49

Lelord Kordel's
Fenugreek Tea
Consists of Fenugreek Seeds
Selected for purity and flavor
4 Ounces Net—Price 50¢
Lelord Kordel Products
Exclusive Distributors—Chicago

Directions for preparing: Use one tablespoonful for each cup of rapidly boiling water. Steep about ten minutes—longer if you wish a more pronounced flavor. Strain. May be sweetened with honey to taste. A few drops of lemon juice will further improve flavor.

That displayed upon written, printed and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving The Agonies of Arthritis" which said circulars were shipped in the aforesaid carton together with said drug, were among others the statements regarding the efficacy of said drug in the cure, mitigation, treatment, and prevention of arthritis, a disease in man, appearing in the circular more fully described in the First Count of this information, which description of said circular in said First Count is by reference hereby incorporated in this Count;

That said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)] in that the aforesaid statements appearing in said booklets were false and misleading in that said statements represented and suggested and created the impression in the mind of the reader that said drug when taken alone, or in combination with other drugs mentioned in said booklet, to wit, "Lelord Kordel's Sarsaparalli Root," "Fero-B-Plex," "Bolax," "Cetabs," "Minerals Plus Chlorophyll and Vitamin D," or with the diets

recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas in truth and in fact said drug when taken
50 alone or in combination with said other drugs mentioned in said booklet, or with the diets recommended in said booklets would not be effective in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT V

And the said Attorney for the United States in manner and form as aforesaid, also gives the Court here to understand and be informed as follows, to wit: -

That Lelord Kordel, an individual trading as Lelord Kordel Products at Chicago, Illinois, did, within the Northern Judicial District of Illinois and within the jurisdiction of this Court on or about January 20, 1944 then and there in violation of the Act of Congress known as Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 321(a)] unlawfully introduce and deliver for introduction into interstate commerce via Railway Express Agency from Chicago, State of Illinois to Seattle, State of Washington, consigned to Dr. McCormick's Natural Foods Co., 1918 Third Ave., Seattle, Washington, a certain consignment, to wit, a number of cartons containing a number of packages, each containing a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon the label of each of said packages when introduced and delivered for introduction into interstate commerce as aforesaid, was the following written, printed and graphic matter, to wit:

Fero-B-Plex

Improved Formula

Fero-B-Plex

Vitamin B-Complex

plus IRON

Now Fortified with
CALCIUM
PHOSPHOROUS
and COPPER

Contains high quality yeast fortified with thiamin, riboflavin, niacin, dicalcium, phosphate, iron sulphate, copper sulphate and necessary excipients

90 Tablets—\$1.50

LLELORD KORDEL PRODUCTS

Exclusive Distributors

Chicago

Fero-B-Plex

51 **THREE FERRO-B-PLEX TABLETS CONTAIN:**

VITAMIN B1 (Thiamin)	1000 Micrograms
VITAMIN B2 (Riboflavin)	500 Micrograms
NIACIN (P-P Factor)	4500 Micrograms
IRON (From Iron Sulphate)	45 Milligrams
COPPER (From Copper Sulphate) ..	50 Micrograms
CALCIUM	150 Milligrams
PHOSPHOROUS	120 Milligrams
Plus Pantothenic Acid, Vitamin B6 Biotin and other B-Complex Factors natural to high quality yeast.	

DIRECTIONS: As a diet supplement, 3 tablets furnish the minimum adult requirements as follows: 100% of Vitamin B1; 25% of Vitamin B2; 300% of Iron; 20% of Calcium; 16% of Phosphorous. The exact need in human nutrition for Niacin and Copper has not been definitely established. Tablets may be swallowed whole or crushed and added to milk or juices.

That displayed upon written, printed and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, namely upon a number of printed booklets entitled "What You Can Do About Relieving The Agonies of Arthritis" which said circulars were shipped by said defendant to said consignee via Railway Express Agency from Chicago, State of Illinois to Seattle, State of Washington, on or about January 18, 1944, were among others the statements regarding the efficacy of said drug in the cure, mitigation, treatment, and prevention of arthritis, a disease in man, appearing in the circular more fully described in the First Count of this information, which description of said circular in said First Count is by reference hereby incorporated in this Count;

That said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)] in that the aforesaid statements appearing in said booklets were false and misleading in that said statements represented and suggested and created the impression in the mind of the reader that said drug when taken alone, or in combination with other drugs men-

tioned in said booklet, to wit, "Lelord Kordel's Fenugreek Tea," "Lelord Kordel's Sarsaparilla Root," "Cetabs,"
 52 "BoLax," "Minerals Plus Chlorophyll and Vitamin D," or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas in truth and in fact said drug when taken alone or in combination with said other drugs mentioned in said booklet, or with the diets recommended in said booklets would not be effective in the cure, mitigation, treatment and prevention of arthritis:

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT VI

And the said Attorney for the United States in manner and form as aforesaid, also gives the Court here to understand and be informed as follows, to wit:

That Lelord Kordel, an individual trading as Lelord Kordel Products at Chicago, Illinois, did, within the Northern Judicial District of Illinois and within the jurisdiction of this Court on or about July 10, 1942 then and there in violation of the Act of Congress known as Federal Food, Drug and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331 (a)] unlawfully introduce and deliver for introduction into interstate commerce, via United States Mail Parcel Post from Chicago, State of Illinois to Seattle, State of Washington, consigned to Dr. McCormick's Natural Foods Co., 1918 Third Ave., Seattle, Washington, a certain consignment, to-wit, a carton containing among other things, a number of packages each containing a number of tablets of a drug within the meaning of 21 U.S.C. 321 (g)(2);

That displayed upon the label of each of said packages when introduced and delivered for introduction into interstate commerce as aforesaid, was the following written, printed and graphic matter, to wit:

53 50 Tablets—Price 50¢
 Lelord Kordel's

BOLAX
 Laxative
 Tablets

Contains Powdered T. V. Senna Leaves, Uva Ursi Leaves, Buckthora Bark, Licorice Root, Red Clover

Tops, Coriander Seed, Elder Flowers, Pale Rose Buds, Peppermint Leaves, African Ginger Root, Fennel Seed, Mexican Saffron, Aniseed, Cyani Flowers.

Distributed By

LELORD KORDEL PRODUCTS

RUSS BLDG.

SAN FRANCISCO

DIRECTIONS: One to two tablets. Children: One-half to one tablet or less, in proportion to age. To avoid any possibility of forming the laxative habit, this preparation should be taken only when necessary. It should never be taken in cases of nausea, vomiting, abdominal pains and other symptoms of appendicitis.

That displayed upon written, printed and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving The Agonies of Arthritis" which said circulars were shipped by said defendant to said consignee via Railway Express Agency from Chicago, State of Illinois to Seattle, State of Washington, on or about January 18, 1944, were among others the statements regarding the efficacy of said drug in the cure, mitigation, treatment, and prevention of arthritis, a disease in man, appearing in the circular more fully described in the First Count of this information, which description of said circular in said First Count is by reference hereby incorporated in this Count:

That said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)] in that the aforesaid statements appearing in said booklets were false and misleading in that said statements represented and suggested and created the impression in the mind of the reader that said 54 drug when taken alone, or in combination with other drugs mentioned in said booklet, to wit, "Lelord Kordel's Fenugreek Tea," "Fero-B-Plex," "Lelord Kordel's Sarsaparilla Root," "Cetabs," "Minerals Plus Chlorophyll and Vitamin D," or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas in truth and in fact said drug when taken alone or in combination with said other drugs mentioned in said booklet, or with the diets recommended in said booklets would not be effective in the

cure, mitigation, treatment and prevention of arthritis.

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

(Sgd.) J. Albert Woll

United States Attorney for the
Northern District of Illinois

(Medical Officer)

55

U. S. vs. Lelord Kordel, trading as Lelord Kordel
Products

F. D. C. No. 14308.

Sample Nos. 70727-F, 70767-F, 70768-F,
70769-F, 70770-F, 70771-F.

City of Washington }
District of Columbia } ss.

Before me, Anselma H. Stein, an employee of the Federal Security Agency, Food and Drug Administration, designated by the Federal Security Administrator, under authority of the Act of January 31, 1925, c. 124, sec. 1, 43 Stat. 803, and Reorganization Plan No. IV, secs. 12-15, effective June 30, 1940, to administer or take oaths, affirmations and affidavits, personally appeared LAWRENCE E. PUTNAM, in the City and District aforesaid, who, being first duly sworn, deposes and says: That he graduated from Harvard Medical School (1934) with M. D. degree; interned at Peter Bent Brigham Hospital (1935-1936); interned at Beth Israel Hospital (1936-1938); First Lieutenant Medical Reserve, United States Army (1938-1939); Associate Medical Officer, Veterans Administration (1939-1941); Medical Officer in the Food and Drug Administration since January 2, 1941.

I have examined the reports of analyses of the product designated in the records of this Agency as 70727-F, and labeled in part "Fero-B-Plex Tablets *****", made by William F. Kunke, Leo Friedman and Henry W. Loy which showed said product to consist of calcium carbonate coated tablets containing Vitamins B1 and B2 and Niacin, and 273 milligrams of calcium per 3 tablets, 66 milligrams of iron per 3 tablets and 158 milligrams of phosphorous per 3 tablets.

I have examined the report of analysis of the product designated in the records of this Agency as 70767-F, and

labeled in part "*Minerals plus*" made by John P. Alden which showed said product to consist of gray compressed tablets containing approximately 687 milligrams of calcium per 6 tablets, 579 milligrams of phosphorous per 6 tablets, and 81.6 milligrams of iron per 6 tablets, together with a small amount of iodine, Vitamin D, and Chlorophyll.

I have examined the report of analysis of the product designated in the records of this Agency as 70768-F, and labeled in part "*Specially Treated Sarsaparilla Root*", made by John P. Alden which showed said product to consist of coarsely cut plant mixture, consisting principally of sarsaparilla root with a small amount of sassafras bark.

I have examined the report of analysis of the product designated in the records of this Agency as 70769-F, and labeled in part "*Cetabs*", made by William F. Kunke which showed said product to consist of coated tablets containing 31 milligrams of Ascorbic Acid per tablet.

I have examined the report of analysis of the product designated in the records of this Agency as 70770-F, and labeled in part "*Fenugreek Tea*", made by John P. Alden which showed said product to consist essentially of whole fenugreek seeds with *some whole barley seeds and other whole unidentified seeds.*

I have examined the report of analysis of the product designated in the records of this Agency as 70771-F, and labeled in part "*BoLax Laxative Tablets*", made by John P. Alden which showed said product to be brown compressed tablets consisting essentially of powdered plant material, *including the emodin bearing drugs senna and buckthorn.*

56 Affiant states that the composition of the products as shown by the foregoing analyses is such that said drugs when taken alone or in combination with the other drugs mentioned in booklet accompanying the shipment, or with the diets recommended in said booklet, would not be effective in the cure, mitigation, treatment and prevention of arthritis.

Affiant further states that his opinion represents the consensus of present day reliable medical opinion.

Lawrence E. Putnam (Sgd.)
Medical Officer, U. S. Federal Security Agency

Subscribed and sworn to before me, at Washington, D. C.,
this 8th day of June, 1945.

Anselma H. Stein (Sgd.)

Employee of the Federal Security Agency des-
ignated under Act of January 31, 1925, and
Reorganization Plan, IV effective June 30,
1940.

Seal

57 U. S. vs. Lelord Kordel, trading as Lelord Kordel
Products (Station Chief)
F.D.C. No. 14308.

State of Illinois }
County of Cook } ss
City of Chicago }

Before me, Elsie S. Burke, an employee of the Federal Security Agency, Food and Drug Administration, designated by the Federal Security Administrator, under authority of the Act of January 31, 1925, c.124, Sec. 1, 43 Stat. 803, and Reorganization Plan No. IV, Secs. 12-15, effective June 30, 1940, to administer or take oaths, affirmations; and affidavits, personally appeared MALCOLM R. STEPHENS, in the city, county, and state aforesaid, who being first duly sworn deposes and says: I am an employee of the United States Government and am Chief of the Chicago Station of the Food and Drug Administration of the Federal Security Agency, which Agency is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act; that records on file in the said Food and Drug Administration, identified, respectively, as 70727-F, 70728-F, 70767-F, 70768-F, 70769-F, 70770-F and 70771-F, and which I have examined, show that on or about Feb. 1, and February 5, 1944, a duly authorized inspector of the Food and Drug Administration, collected from a dealer located at Seattle, Washington, the following samples:

- (70727-F) A sample of a drug product labeled, in part, as follows: (on box) "Fero-B-Plex ****", (coupon in box) headed "This Coupon Entitles You To A Free Subscription to 'HEALTH TODAY'";
- (70728-F) A sample consisting of a booklet headed "What You Can Do About Relieving The Agonies Of Arthritis By Lelord Kordel";

- (70767-F) A sample of a drug product labeled, in part, as follows: (on box) ".... Minerals plus Chlorophyll & Vitamin D", (coupon in box) headed "This Coupon Entitles You To A Free Subscription to 'HEALTH TODAY'";
- (70768-F) A sample of a drug product labeled, in part, as follows: (on box) "Lelord Kordel's Specially-Treated Sarsaparilla Root U.S.P.";
- (70769-F) A sample of tablets labeled, in part, as follows: "Cetabs", (coupon in box) headed "This Coupon Entitles You To A Free Subscription to 'HEALTH TODAY'";
- (70770-F) A sample of a product labeled, in part, as follows: "Lelord Kordel's Fenugreek tea", (coupon in box) headed "This Coupon Entitles You To A Free Subscription to 'HEALTH TODAY'";
- (70771-F) A sample of tablets labeled, in part, as follows: ".... Lelord Kordel's BoLax Laxative Tablets".

That at the time of such collections, *the dealer* in possession of the goods sampled, in each instance, *signed an affidavit*, or statement, evidencing that the sample so collected consisted of goods shipped to the said dealer by Lelord Kordel, Chicago, Illinois, and at the same time there was delivered to the said inspector documentary evidence of such transportation of said goods;

That the samples, identified as 70727-F, 70767-F, 70768-F, 70769-F, 70770-F, 70771-F, so collected, were analyzed by duly authorized analysts of the Food and Drug Administration, who reported as follows:

58 70727-F *et al*

(in the case of 70727-F Fero-B-Plex Tablets)

The product consists of calcium carbonate coated tablets containing Vitamin B1 and B2 and Niacin, and 273 milligrams of calcium per 3 tablets, 66 milligrams of iron per 3 tablets, and 158 milligrams of phosphorous per 3 tablets.

(in the case of 70767-F Minerals plus)

The product consists of gray compressed tablets containing approximately 687 milligrams of calcium per 6 tablets, 579 milligrams of phosphorous per 6 tablets, and 81.6 milligrams of iron per 6 tablets, together with

a small amount of iodine, Vitamin D, and chlorophyll.
(in the case of 70768-F Sarsaparilla)

The product consists of coarsely cut plant mixture, consisting principally of sarsaparilla root with a small amount of sassafras bark.

(in the case of 70769-F Cetabs)

The product consists of coated tablets containing 31 milligrams of Ascorbic Acid, per tablet.
(in the case of 70770-F Fenugreek Tea)

The product consists essentially of whole fenugreek seeds with some whole barley seeds and other whole unidentified seeds.

(in the case of 70771-F Bolax Laxative Tablets)

The product is brown compressed tablets consisting essentially of powdered plant material, including the emodin bearing drugs senna and buckthorn.

Malcolm R. Stephens (Signed)

Chief, Chicago Station

Food and Drug Administration

Federal Security Agency

Subscribed and sworn to before me, at Chicago, Illinois, this 12th day of April, 1945.

Elsie S. Burke (Signed)

(Seal)

Employee of the Federal Security Agency, designated under the Act of January 31, 1925, and Reorganization Plan IV, effective June 30, 1940.

59

No. 45 CR 490

In the District Court of the United States for the Northern District of Illinois, Eastern Division, United States of America vs. Lelord Kordel, trading as Lelord Kordel Products. Criminal Information: Vio. 21 U.S.C. Section 331(a). (Introduction and delivery for introduction into interstate commerce of a drug which was then and there misbranded.) J. Albert Woll, United States Attorney. Filed June 13, 1945. Roy H. Johnson, Clerk.

60

And on the same day, to wit, on the 13th day of July, 1945, being one of the days of the regular July term of said Court, in the record of proceedings thereof,

in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to wit:

61

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Friday, July 13, 1945

Present: Honorable William J. Campbell, District Judge.

• • (Caption—No. 45 CR 490) • •

On motion of the United States Attorney,

It is ordered that leave be and is hereby given to file Criminal Information against Lelord Kordel, trading as Lelord Kordel Products, the defendant herein, and

It is further ordered that a bench warrant issue for the defendant and that the bond of the defendant be and the same is hereby fixed at the sum of One Thousand Dollars (\$1,000).

62 And afterwards, to wit, on the 16th day of July, 1945, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

63

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, July 16, 1945.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

On motion of the defendant Lelord Kordel

It is ordered that the bail of said defendant be and the same is hereby reduced to the sum of Five Hundred Dollars (\$500).

64 And afterwards, to wit, on the 24th day of September, 1945, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

65

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, September 24, 1945.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

By agreement of the parties to this suit now made in open Court

It is ordered that this cause be and the same is hereby re-set to October 24, A. D. 1945 at 10:00 o'clock A. M. for arraignment and plea as to the defendant Lelord Kor-del.

66 And afterwards, to wit, on the 25th day of September, 1945, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Elwyn R. Shaw District Judge, appears the following entry, to wit:

67

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Tuesday, September 25, 1945.

Present: Honorable Elwyn R. Shaw, District Judge.

• • (Caption—No. 45 CR 490) • •

On motion of the United States Attorney

It is ordered that the above entitled cause be referred to the Executive Committee of this Court for re-assignment.

68 And afterwards, to wit, on the 26th day of September, 1945, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, William J. Campbell, and Elwyn R. Shaw, Executive Committee District Judges, appears the following entry, to wit:

69

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

• • (Caption—No. 45 CR 490) • •

It is ordered that the above entitled cause be, and the same is hereby re-assigned to Judge LaBuy.

Barnes,
Campbell,
Shaw,

Executive Committee.

Chicago September 26, 1945.

70 And afterwards, to wit, on the 24th day of October, 1945, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

71

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Wednesday, October 24, 1945.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

By agreement of the parties to this suit now made in open Court

It is ordered that this cause be and the same is hereby re-set to November 29, A. D. 1945 at 10:00 o'clock A. M. for arraignment and plea.

72 And afterwards, to wit, on the 29th day of November, 1945, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

73

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Thursday, November 29, 1945.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

By agreement of the parties to this suit now made in open Court

It is ordered that this cause be and the same is hereby re-set to January 5, A. D. 1946, for arraignment and plea.

74 And afterwards, to wit, on the 4th day of January, 1946, being one of the days of the regular December, 1945, term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

75

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Friday, January 4, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

It is ordered by the Court that this cause be and the same is hereby re-set for arraignment and plea from January 5, A. D. 1946 to January 7, A. D. 1946 at 10:00 o'clock, A. M.

76 And afterwards, to wit, on the 7th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

77

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, January 7, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

On motion of the defendant

It is ordered that this cause be and the same is hereby continued to January 14, A. D. 1946 for arraignment and plea.

78 And afterwards, to wit, on the 14th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

79

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois.
Eastern Division.

Monday, January 14, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

On motion of the defendant

It is ordered that this cause be and the same is hereby re-set for arraignment and plea for February 14, A. D. 1946.

80 And on the same day, to wit, on the 14th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

81

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, January 14, 1946.

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

On motion of Attorneys Albert I. Kegan, Esther O. Kegan, Kegan, Kegan and Kegan, John A. Nash and Nash & Donnelly

It is ordered that leave be and it is hereby given to said attorneys to withdraw their appearance herein as attorneys for defendant and

It is further ordered that leave be and it is hereby given to James W. Breen, Esq., to enter his appearance herein in lieu thereof.

82 And afterwards, to wit, on the 14th day of February, 1946, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

83

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Thursday, February 14, 1946

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 490) • •

This day comes the United States by the United States Attorney comes also the defendant Lelord Kordel trading as Lelord Kordel Products in his own proper person and

Order of Consolidation

by his counsel and being arraigned upon the Criminal Information filed herein against him pleads not guilty thereto and

It is ordered that this cause be and the same is hereby set for trial on March 18, A. D. 1946.

84 And afterwards, to wit, on the 18th day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

85

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, March 18, 1946

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption No. 45 CR 490) • •

On motion of the United States by the United States Attorney

It is ordered that this cause be and the same is hereby consolidated with Causes Numbered 46 CR 1 and 45 CR 488 for trial the consolidated cause to proceed under the title of United States of America vs. Laura Kordel, an individual trading as Gotu Kola Distributors, and Lelord Kordel, Lelord Kordel Trading as Lelord Kordel Products, Lelord Kordel trading as Lelord Kordel Products and Nutrition Enterprises, Numbered 45 CR 488, Consolidated Cause.

86 And be it remembered, that on, to wit, the 7th day of January, 1946 there was filed in the Clerk's office of said Court a certain Criminal Information in the cause entitled: United States of America, v. Lelord Kordel, trading as Lelord Kordel Products and Nutrition Enterprises, No. 46 CR 1; in words and figures following, to wit:

87 F.D.C. No. 17777

IN THE DISTRICT COURT OF THE UNITED STATES
Within and for the
Northern District of Illinois
Eastern Division.

• • (Caption—Information No. 46 CR 1) • •

December Term, 1945

J. Albert Woll, Attorney for the United States in and for the Northern District of Illinois, who for the said United States in this behalf prosecutes, in his own proper person comes into Court on this 7th day of January, A. D. nineteen hundred and forty-six, and with leave of Court first had and obtained, gives the Court here to understand and be informed, as follows, to wit:

That Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331 (a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321 (g) (2);

That displayed upon said package, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

88

CETABS

Each Tablet Contains Not Less Than 600 U. S. P.

Units Vitamin C (30 Mg. Ascorbic Acid) and Necessary Excipients

30 Coated Tablets—\$1.00

Distributed by Lelórd Kordel Products—Chicago.
One Tablet Furnishes The Full Minimum Daily Adult Requirement For Vitamin C, Which Is 600 U.S.P. Units. Where An Actual Vitamin C Deficiency Is Known To Exist, Larger Amounts May Be Taken As Directed By Your Physician. Tablets May Be Chewed Or Swallowed Whole, Or Crushed And Added To Fruit Juices, Milk, Or Other Foods.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

... WHY YOU NEED VITAMIN C EVERY DAY!

Do you want to age faster, or stay normally young? Do you want sound teeth and gums? Stronger elastic blood vessels? Better digestion? Clearer complexion? More vitality? Science does not know ALL of the benefits you get from Vitamin "C." But here are some of the things known about "C" . . . the vitamin that CAN'T be stored in your system! . . . the vitamin you should get in your food every day!

Men who feel old before their time! Men who come home at night dog-tired and "cross as a bear." Chances are they have "C" starvation—and don't know it. They belong to the 45 million Americans, rich and poor, who—according to government health authorities—don't get enough vitamins in their food.

Few people realize that life in the human body is a continuous "replacement" process.

You see, body tissues constantly wear out. Constantly re-build, re-form. In youth, they rebuild faster than they wear out. In the declining years, they wear out

89. faster than they rebuild. This is the process of growing old. Now science knows that without enough vitamin "C" connective tissue, body and bone tissue, cannot replace itself properly, cannot re-form fast enough. Thus without enough "C" the process of old age comes on faster than it should.

WHY YOU NEED "C" DAILY

To help stay normally young, to help glands, blood vessels and body tissue to resist the aging process you need plenty of vitamin "C" daily.

All the vitamins are essential. But some vitamins like B and C are not stored by the system. You must get them in your food daily! And "C" is often hard to get. ***

***Overwork, colds and too much alcohol rob your system of it. **AND THE BODY CAN'T STORE IT!** You may "eat your head off" and still be low on "C."

WHEN NATURE WARNS!

If you catch "one cold after another," if you feel pain in your joints, if you black-and blue easily, if your gums are soft and irritated, if cuts don't heal quickly, if you feel "old and tired" then take warning. Consult your doctor immediately. And be sure to get plenty of the vitamin "C" foods and to supplement your diet with vitamin "C" in concentrated form. These are all signs that your meals are not giving you even the fair minimum of "C" necessary to health.

WHAT BRINGS ON PREMATURE OLD AGE?

*** Postponement of premature old age depends to a great degree upon a balanced diet with sufficient "C" every day.

It is true that some people "grow old" faster than others. While science has no way to isolate the cause in all such cases, there is ample evidence that liberal intake of protective foods postpones premature old age, and helps maintain normal youth and vigor during the "middle years."

And this is scientific fact! Every day—bone and body tissue wears out. It must be replaced. In this way, the body constantly renews itself, stays "youthful." But there is one known vitamin absolutely essential to this process—body tissue simply cannot form prop-

erly without Vitamin "C". Because of this . . . and because the body does not store "C"—it is highly important to get some Vitamin "C" every single day.

...
Lack of vitamin C lowers resistance to infection, impairs blood regeneration, arthritic lesions, retards growth, interferes with reproduction and lactation and helps shorten the life span. The lens of the eye contains vitamin C and the lack of it may sometimes be a contributing cause of cataracts.

... glossitis; poor calcification of the teeth; pyorrhea. ...

LIVER TROUBLES OFTEN HELPED BY "C"

Keeping your body well supplied with Vitamin C may help to protect the health of your liver, according to an experiment recently reported in the Archives of Internal Medicine.

This fact was learned by injecting a chemical known for its toxic effect on the liver into guinea pigs which had been deprived of Vitamin C. Serious liver damage resulted. But other guinea pigs which had been fed ample amounts of Vitamin C suffered little harm when subjected to the same toxin.

STIFF JOINTS MAY BE "STARVED" ONES

90 All you may need to ease stiff joints and rid yourself of those annoying creaks and twinges that bother so many folks of middle age and over may be more fruits and vegetables high in Vitamin C, which is essential for the formation of strong connective tissues. Failure to get enough of the vitamin can mean that the cells of your joints won't be properly held together. Thus joints may become inflamed, with resulting pain and stiffness which rubbing ointments can't correct. Try getting extra vitamin C. Then see if you don't feel better.

VITAMIN "C" AND HORMONES

Recent research reveals that one of the functions of vitamin C is that of aiding in the synthesis of the adrenal hormone known as corticosterone. A deficiency of vitamin C in the adrenal glands has been shown to cause a reduction of 9/10 of the amount of hormone formed by this gland. In severe cases, manifestations

of this deficiency may include a bronzing of the skin, a rise in potassium of the blood, a serious loss of water in the skin and tissues, impaired kidneys, loss of body salt (sodium chloride), muscle weakness; abnormally low blood pressure.

VITAMIN "C" FOR DIABETICS

Discovery that vitamin C acts like insulin, the hormone used for the relief of diabetics is among the latest contributions of India's scientists. Prof. S. Bamerjee of the School of Tropical Medicine, Calcutta, has found that the action of vitamin C is very much like that of insulin as regards the utilization of carbohydrates. The scientist found that production of insulin is markedly reduced when experimental animals ate food lacking in vitamin C.

HOW "C" AFFECTS YOUR COMPLEXION.

Vitamin "C" starvation often betrays itself in the complexion. If blemishes heal with difficulty, if you bruise easily, you may be low on "C." Plenty of "C" helps keep you feeling young, buoyant, alive! If you lack vitamin "C" foods and get a supplementary source of vitamin "C"—then you will look and feel better!

"C" HELPS FIGHT SUMMER TIREDNESS

A doctor engaged in industrial research has discovered that vitamin "C" tablets will stave off prostration and muscular cramps. The experiment was first tried among the Bantu miners in South Africa who frequently developed muscular weakness from the heat, even though they ate fresh fruit and vegetables. These workers were given two vitamin "C" tablets a day along with common salt tablets to replace the salt lost in perspiration. As a result the cases of heat exhaustion disappeared, even when the temperature soared to over 100 degrees.

This doctor said that vitamin "C" tablets "should prove useful in steel mills, foundries and ship yards, in the engine room of ships and among troops in the tropics." We know today that the military forces are paying particular attention to the vitamin "C" in the diets of all our fighting forces.

... Common colds, overwork, too much alcohol ... all rob the system of it. The body WON'T store it. You must replace it.

The too common impression that all the vitamin C ingested by humans is fully absorbed and utilized has now been disproved. Almost regardless of the quantity taken into the stomach from $\frac{1}{3}$ to $\frac{1}{2}$ is excreted. The significance of this finding is that more Vitamin C must be ingested to accomplish its purpose than has been generally believed.

...

HEART TROUBLE

Recent research indicates that lack of "C" may be a contributory cause of heart inflammation, heart enlargement and heart failure. If afflicted your physician will advise you if dietary factors are involved.

91 FREQUENT COLDS

If life is "just one cold after another," it is wise to check up and see whether you're getting enough "C." Doctors have found that Vitamin "C" helps build resistance to colds.

STRONG BONES

Calcium is the "raw material" from which the body's bones are built. To enable the body to form this calcium into strong bones, plenty of vitamin "C" is an absolute necessity.

TIRE QUICKLY?

One of the commonest signs of Vitamin "C" starvation is lack of energy. If you feel "all played out" at the end of the day, then try stepping up your daily vitamin C intake.

THE BLOOD

The effects of "C" deficiency include loss of color or anemia, lowering of ability to clot, and reduction in anti-body formation. Plenty of "C" helps keep the blood more healthy.

DIGESTION

People who "never can get up an appetite," who have to "coddle" their stomachs, often turn out to be innocent victims of diets weak in Vitamin "C."

...

COMPLEXION

Are you having trouble with your complexion? Is it dull and sallow? Do pimples and other blemishes take a long time to heal? Then your diet may be dangerously low on "C."

ACHING JOINTS

Pains in the joints frequently indicate that you are not getting enough vitamin "C". If this is your case be sure to get enough Vitamin "C" food.

BLOOD PRESSURE

Closely related to Vitamin "C" is the newly discovered Vitamin "P". One important function of this vitamin is to help keep the blood vessels normal and elastic. This means better resistance to high blood pressure—less danger of strokes in middle age.

...

... low vitality ... painful joints pyorrhea loss of weight tire easily poor complexion indigestion frequent colds tooth decay retarded growth

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)], in that the aforesaid statements appearing in the bulletins accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective to insure strong teeth, healthy gums, good digestion, clear complexion, vigorous health, and that it would be effective to prevent and correct premature old age, liver troubles, stiff joints, hormone deficiency and malfunction, diabetes, poor complexion, fatigue, heart trouble, colds, high blood pressure, pyorrhea, loss of weight, tooth

92 decay, retarded growth and poor appetite, whereas, in fact and in truth, said drug would not be effective to insure strong teeth, healthy gums, good digestion, clear complexion, vigorous health, and said drug would not be effective to prevent and correct premature old age, liver troubles, stiff joints, hormone deficiency and malfunction, diabetes, poor complexion, fatigue, heart trouble, colds, high blood pressure, pyorrhea, loss of weight, tooth decay, retarded growth and poor appetite;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to under-

stand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

93

ORMOTABS

Contains Sarsaparilla Root Extract (4-1), Kelp, Sassafras Bark, Papain, Chlorophyll & Excipients.

50 Coated Tablets—\$2.00

Distributed by Lelord Kordel Products—Chicago

Directions: As a Dietary Supplement, for experimental use, two tablets provide approximately 200% of the daily adult requirement for iodine, together with Sarsaparilla Root, Sassafras Bark, Papain and 20 milligrams of Chlorophyll—the exact needs for which, in human nutrition, have not been officially established. Tablets may be chewed or swallowed whole.

This displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit: on

or about February 27, 1945, were, among other things, the following statements regarding said drug:

GREEN BLOOD

CHLOROPHYLL FOR HEALING

Chlorophyll *** its ability to combat many deficiency, infectious and chronic diseases suffered by millions of people is nothing short of miraculous. Chlorophyll *** has been proved the key that can unlock the door to health and happiness for many whose lives are today blighted by pain and disease. ***

CHLOROPHYLL SUSPECTED TO STRENGTHEN BODY CELLS ***

*** Chlorophyll was seen to thicken and strengthen the walls of the body cells in living animals. This opened vast possibilities as an aid to the human body in fighting germ invaders

CHLOROPHYLL USEFUL IN ANEMIA

*** great hope for the treatment of anemia, especially since Chlorophyll so closely resembles hemoglobin, the red coloring matter in human blood. Here was Chlorophyll, the green blood of plants, having a very close relation to red blood that flows through man's veins.

94 *** Because an effective treatment for anemia had long been of major concern to the multitude of sufferers from hemoglobin deficiencies, the experiments conducted by several eminent physicians were watched with great interest.

Could Chlorophyll be the answer? It was. Chlorophyll came through the experiments with flying colors, succeeding where so many other treatments for anemia had failed. After taking Chlorophyll, all the anemia patients showed increased hemoglobin counts. And today Chlorophyll is recommended for anemia sufferers because of its stimulating effect on blood-forming organs. ***

*** The ailments treated ranged all the way from deep internal infections, such as peritonitis and brain ulcers, to pyorrhea and skin disorders. In case after case, the doctors were able to write on the patient's record "Discharged as cured."

CHLOROPHYLL AND VARICOSE VEINS

Ulcerated varicose veins; osteomyelitis (a serious bone infection); acute infections of the nose, throat and ear; male and female urinary tract infections; empyema; fistula; deep abscesses; skin disorders; various types of wound infections—all were successfully treated with Chlorophyll. And Chlorophyll was found to be unusually valuable in treating chronic ulcers, especially those of the indolent, varicose type.

USEFUL IN SINUS INFECTIONS

*** Every one of 1,000 cases of respiratory infections (sinusitis, rhinitis, head colds, etc.) when treated with Chlorophyll was either cured completely or greatly relieved. *** numerous common colds were cured completely within 24 hours. What blessing Chlorophyll can be to winter's millions of sneezing, coughing victims who drag through the days too ill, too miserable to do anything but "just wait until the cold runs its course"!

Chlorophyll has also reached out to extend its benefits to persons suffering from arteriosclerosis—thickening and hardening of artery walls. This "wonder blood" of the plant world has also been administered to persons suffering from cardiac hypertensions and other heart ailments.

Chlorophyll has proved its great value as a treatment in case after case of nervous fatigue, tubercular infections, acute diseases, underdevelopment in children, etc.

In serious mouth disorders, such as advanced cases of pyorrhea and Vincent's angina, Chlorophyll has brought immediate, positive results. Reports show that in such cases the gums tightened up entirely and have remained clean ever since the treatment.

*** no remedy came anywhere near equaling the speed with which Chlorophyll brought about healing of the wounds and burns. In those instances where germ infections had set in, Chlorophyll stimulated the growth of new, healthy tissues, despite the presence of bacteria.

ACTS AS A CHECK ON GERMS

This wonderful green plant blood seems to act as a check on germs. It keeps them from multiplying, and

it is believed to accomplish this by setting free within the human blood stream sufficient amounts of oxygen to break down the germ itself. ***

With all these marvelous healing and germ-fighting powers of Chlorophyll why should man continue to suffer the pain and misery which all these diseases and ailments inflict on millions of people every day? ***

But science has come to the rescue and now modern man can depend on food concentrates for his supply of health-building Chlorophyll.

95 Lelord Kordel's "ORMOTABS" contain 10 milligrams of highly concentrated Chlorophyll. ***

PAST 40? AND GROWING OLD TOO SOON?

Try ORMOTABS

The Nutritional Adjunct for men and women past 40 and forget your troubles!

ORMOTABS are not sold as a cure-all for the troubles of middle-aged people, nor are they sold as a youth restorer. It is the purpose of ORMOTABS to supply you with concentrated Chlorophyll, Sarsaparilla Extract, Food Iodine and other elements which are sometimes needed by many men and women past 40.

*** The nutritional adjunct *** containing Chlorophyll, Sarsaparilla Extract ***

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "Nutrition Guide", which said booklets were shipped with said drug, were, among other things, the following statements regarding said drug:

HORMONES

WHAT YOU NEED TO KNOW ABOUT THEM ***

You don't get hormones in your food as you get vitamins or minerals. But if your glands fail to produce them in sufficient quantity or at the right time, you can probably aid your glands to a more normal production of hormones. ***

*** extract of sarsaparilla is useful in hormone-production. ***

*** chlorophyll is regarded by some as the hormone-like substance ***

For those men and women past forty who are interested in experimenting with gland activation, Lelord Kordel has produced ORMOTABS ***

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)], in that the aforesaid statements appearing in the bulletins and booklets accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment of anemias, internal infections, peritonitis, brain ulcer, osteomyelitis, ulcerated varicose veins, respiratory infections, arteriosclerosis, cardiac hypertension or other heart ailments, nervous fatigue, tubercular infections, and undernourishment in children, that said drug would be effective to promote hormone production and that it would provide substances possessing hormone activity, whereas, in fact and in truth, said drug would not be effective in the treatment of anemias, internal infections, peritonitis, brain ulcer, osteomyelitis, ulcerated varicose veins, respiratory infections, arteriosclerosis, cardiac hypertension or other heart ailments, nervous fatigue, tubercular infections, and undernourishment in children, said drug would not be effective to promote hormone production, and it would not provide substances possessing hormone activity;

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was further misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)], in that the statements, to wit, "As a Dietary Supplement *** together with Sarsaparilla Root, Sassafras Bark, Papain and 20 milligrams of Chlorophyll—the exact needs for which in human nutrition, have not been officially established", displayed upon the packages containing said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that the substances, to wit, sarsaparilla root, sassafras bark, papain and chlorophyll, are nutritional factors and that said substances are of dietary importance, whereas, in fact and in truth, said substances are not nutritional factors and are not of dietary importance;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

97

COUNT III

And the said Attorney for the United States in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment; to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

RIBOTABS

Each tablet contains not less than 1000 micrograms of Riboflavin. Directions for use on other side.

50 Tablets—\$1.00

Distributed by Lelord Kordel Products—Chicago

Daily Riboflavin Requirements

The daily minimum adult requirement of Riboflavin (Vitamin B-2 or "G") is 2000 micrograms which is equal to 2000 gammas or 2.0 milligrams. The requirement for children, pregnant and lactating women, varies according to age and circumstances. Consult your physician in these cases.

Directions: As a Dietary Supplement, 2 tablets supply the minimum daily adult requirement set by the United States Government. For relief of deficiency conditions 3 or more tablets daily, as required.

98 That displayed upon printed and graphic matter ac-

companying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely upon a number of printed bulletins entitled "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

THE VITAMIN Essential for HEALTH SKIN HAIR AND EYES

***deficiency of Riboflavin (Vitamin G) may often result in: digestive disturbances, impaired growth, poor lactation, and lack of vigor. A severe deficiency of Riboflavin may often result in nutritional cataracts, loss of hair, certain types of ulcers, loss of weight, and usually the development of pellagra. ***

"RIBOFLAVIN FOUND CURE FOR A TYPE OF BLINDNESS"

*** blindness due to the formation of small blood vessels in the cornea of the eye, responded quickly to the administration of Riboflavin. ***

RIBOFLAVIN AND HIGH BLOOD PRESSURE

A new theory of the origin of some types of high blood pressure, tracing it to a chain of chemical influences in the body, including a deficiency of the vitamin Riboflavin, ***

(Picture of man with chagrined expression noticing hairs clinging to hairbrush)

When your hair begins to fall out too rapidly and when your skin becomes dry and rough, do the smart thing; immediately check up on your Riboflavin intake.

HERE'S HELP FOR AN OILY SKIN

An abnormally oily complexion may be more than a social handicap—it is often one of the early signs that Riboflavin is inadequate in the diet.

Technically, this skin condition is known as SEBORRHEA. Greasy accumulations usually appear in the folds of the face, especially around the nose and lips, but if the vitamin deficiency is severe enough, other parts of the body are affected.

Experts point out that women show Riboflavin deficiencies more often than men—and they also have more complexion troubles.

... "much additional work is necessary." But he believes that one more step has been taken toward explaining at least some cases, with hope that therapeutic conclusions may eventually follow.

...

Although Riboflavin is found in wheat germ, turnip greens, egg yolks, broccoli, roasted peanuts, yeast and several other foods, it has been discovered that many people do not take advantage of these foods to obtain the Riboflavin they need for their daily health requirements. ...

99. Here's Help for an Oily Skin

An abnormally oily complexion may be more than a social handicap—it is often one of the early signs that Riboflavin is inadequate in the diet.

Technically, this skin condition is known as SEBORRHEA. Greasy accumulations usually appear in the folds of the face, especially around the nose and lips, but if the vitamin deficiency is severe enough, other parts of the body are affected. Experts point out that women show Riboflavin deficiencies more often than men—and they also have more complexion troubles.

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)], in that the aforesaid statements appearing in the bulletins accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment and prevention of blindness, high blood pressure, ulcer, loss of weight, oily skin, falling hair, digestive disturbances and poor complexion, whereas, in fact and in truth, said drug would not be effective in the treatment and prevention of blindness, high blood pressure, ulcer, loss of weight, oily skin, falling hair, digestive disturbances and poor complexion;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT IV

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress 100 known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040;; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

IMPROVED FORMULA

Fero-B-Plex

Vitamin B-Complex plus IRON

NOW ONLY \$1.19 For a Limited Time

Contains high quality yeast fortified with thiamin, riboflavin, niacin, dicalcium phosphate, iron sulphate, copper sulphate and necessary excipients

90 Tablets—\$1.50

LELORD KORDEL PRODUCTS

Exclusive Distributors Chicago

THREE FERO-B-PLEX TABLETS CONTAIN:

VITAMIN B1 (Thiamin)	1000 Micrograms
VITAMIN B2 (Riboflavin)	500 Micrograms
NIACIN (P-P Factor)	4500 Micrograms
IRON (From Iron Sulphate)	45 Milligrams
COPPER (From Copper Sulphate)	50 Micrograms
CALCIUM	150 Milligrams
PHOSPHOROUS	120 Milligrams

DIRECTIONS: As a diet supplement, 3 tablets fur-

nish the minimum adult requirements as follows: 100% of Vitamin B1; 25% of Vitamin B2; 300% of Iron; 20% of Calcium; 16% of Phosphorus. The exact need in human nutrition for Niacin and Copper has not been definitely established. Tablets may be swallowed whole or crushed and added to milk or juices.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for
101 introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

WHICH OF THESE TROUBLES WORRIES YOU?

Lack of Vitality Poor Appetite Mild Indigestion
Rundown Feeling Common Constipation Nervous-
ness Irritability Reduced Vigor *** to Enjoy That
Wonderful Feeling You Owe It to Yourself To Try
B-Complex With Iron!

Scores of doctors everywhere are recommending the "magical" vitamin B-Complex to men and women who are run-down, nervous and constantly tired. It's because this remarkable little group of the B Vitamins are wonder workers when it comes to toning up lax and lazy muscles and soothing jumpy nerves made raw by a deficiency of The Vitamin B-Complex. If you lack pep and strength, it will certainly be well worth your while to give the vitamin B-Complex a chance to see what it can do for you.

If you lack vitality, or suffer the common symptoms due directly to a dietary deficiency of Vitamin B-Complex and Iron—then do what your doctor advises in cases like this:

Take extra Vitamin B-Complex and Iron every day. To get the original Vitamin B-Complex and Iron ask your health food dealer for FERRO-B-PLEX tablets.

VITAMIN B-COMPLEX IS THE MOST DIFFI-

CULT OF ALL VITAMINS TO OBTAIN IN OUR DAILY DIET.

Among all the vitamins, now known and recognized, the vitamin called the "B-Complex" is the one most difficult to obtain in abundant quantities in our daily diet. Hence, more human ills are traceable to a deficiency of this vitamin than any other.

*** All vitamins of the B-Complex for which the U.S. Government has set definite requirements.

*** You cannot buy a better product of this type no matter if you paid five times as much.***

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving the Agonies of Arthritis", which said booklets were shipped by said defendant to said Western Natural Foods Co., via Railway Express Agency, Inc., from Chicago, State of Illinois, to Seattle, State of Washington, prior to the date of shipment of said drug, as aforesaid, to wit, on or about November 13, 1944, were, among other things, the following statements regarding said drug:

What You Can Do About Relieving the Agonies of ARTHRITIS ***

Practical and helpful advice for the millions who suffer from arthritis. *** you may use diet and vitamins *** to help speed relief and make life pleasanter for yourself.

Relieving the Agonies of ARTHRITIS

*** Rivalling heart disease and cancer as a thing to be dreaded, arthritis stands near the head of the list of American afflictions. ***

Known variously as arthritis deformans, rheumatoid arthritis, atrophic arthritis and infectious arthritis—to mention only a few aliases—this is the joint affection which is characterized, in its more advanced stages, by swelling and deformity of the joint, accompanied by some degree of immobility. Its symptoms are easily recognized by those who know them, but, unfortunately, many people take them for mere momentary twinges and ignore their warning. This, incidentally,

is one of the reasons for the great prevalence of arthritis in our country today. The American fault of putting off actions until driven to it—our grasshopper complex—is to blame for the number of bedridden arthritics.

This type of arthritis starts off with such a twinge in the joints—usually in the hands, but sometimes in the knees. But the unfortunate human race is, apparently, used to taking such pains for granted as integral part of their existence. So they pay no attention. Over a period of weeks, months, or even years, the pains get progressively worse, spreading to other joints and becoming more and more persistent. Then, when the sufferer can no longer stand it, he goes to a physician, only to find that treatment is now a long and patience-trying task. Had the disease been caught at its inception, things would have been much easier and complete recovery more assured.

...
It used to be considered that all arthritis was caused by focal infections in the body: teeth, tonsils, appendix and so on were all looked at askance, and promptly removed. At present, however, benefitting from the experience of such wholesale but often unsuccessful operative treatment, we look elsewhere for causes. And immediately improper diet comes to light: underweight, overweight, anemia, toxemia and acid condition of the blood have all been found to be important contributing factors.

...
But, getting back to the dietary causes, we find a greater abundance of factors, and ones that are not so much subject to conjecture. Here we find many of the arch villains in our life today: sweets, condiments, coffee, tea, alcohol and tobacco. With arthritis, carbohydrates such as contained in candies and other sweet things should be avoided like the plague; all spicy foods, too, must be omitted from the diet. It goes without saying that alcohol and tobacco—both of which are blood toxicants—must be eschewed. For this acid condition of the blood is one of the main contributing factors in cases of arthritis. Certainly, purity of the blood stream has been preached for so long now that

it is surprising that one has to go on talking about it. And coffee¹ is another thing which leads to such a state—particularly if drunk with cream and sugar; for the caffein contained therein if consumed to excess, is converted into uric acid which in turn affects the blood
103 when present in quantities.

Starch foods are another thing to be done away with in the treatment of arthritis, as they also leave an acid ash. Thus, one finds in combatting arthritis, it is essential to change the diet from one of acid-forming to alkaline-forming foods:

Still another cause of rheumatoid arthritis has been found perhaps one of the most important factors among the many given: disturbed nutritional metabolism which is brought about by a deficiency of calcium phosphorus, and vitamin D and other essential minerals. As the calcium and phosphorus have been taken from other parts of the body to build up the calcareous deposit between the two bones that form the joint, there is an uneven distribution of the two elements in the rest of the body. The other bones and the blood have been deprived by nature of their calcium in order to bring about immobility—hence some supposed degree of ease—in the grating joint, and this must be re-introduced by the consumption of calcium—and phosphorus—bearing foods.² ***

Lack of vitamin C has been claimed, by some authorities, to have a bearing on arthritis cases. This, too, affects the bone development, and provides increased resistance to infection, so it is an important element in the course of treatment.

*** Since anemia is another thing to be considered when trying to overcome arthritis, *** An iron-rich supplement is also recommended.³

One of the most effective preparations for a dietetic treatment of arthritis is to stop eating entirely for a

¹Instead of coffee, drink Lelord Kordel's Sarsaparilla Tea. All health food stores carry it. If you must drink some coffee—and arthritics shouldn't!—learn to drink it without sugar or cream, and add a few drops of lemon juice to it in order to neutralize harmful elements.

²For a reliable source of calcium-phosphorous-Vitamin D, try MINERALS PLUS—which contains the two minerals mentioned plus 17 others in addition to Vitamin D and Chlorophyll.

³FERO-B-PLEX is an excellent iron-rich B-Complex supplement.

while. This may sound ambiguous, but it is entirely sensible when you pause to consider the benefits to be derived therefrom. A day of fast completely frees the body of accumulated poisons and gives the specific arthritis diet clear ground in which to work.

So, with this in mind, the first step is to take a small dose of a *mild* laxative* when you go to bed the night before the day of fasting. Taken with plenty of water, this flushes out all extraneous matter from the colon, but does not panic the peristaltic muscles.

The following day, absolutely nothing should be taken into the system except pure distilled water. Drink as much of it as you can—a glass every hour. As it is distilled, it will gather up the unwanted impurities and undesirable mineral matter in the body. But, as a great deal of calcium and other minerals will be excreted during the course of a day, it is best that you take at least six concentrated mineral tablets. This will preclude the loss of the minerals that are so valuable to the arthritic person. That night, again take some of the mild laxative, and get plenty of sleep.

*** Here is the procedure for the *Juice Purifying Diet*:
Night before: Two BoLAX Tablets

Before retiring: Two BoLAX Tablets.

This is both a good way to continue the purifying of the intestinal tract and a method by which the complete fast may be tapered off. For the liquid part of it will continue to flush the colon, carrying away what impurities have managed to linger; yet the nutritive qualities of the fruits will benefit the system that has had no food without overtaxing the organs for whose benefit you started the fast: the stomach, liver and so forth. What's more, it has the highly desirable effect of alkalizing the system, a consummation devoutly to be wished in the treatment of arthritis. This, too, should be followed by the mild laxative upon retiring.

Then, for a week, you continue the process of gradually breaking your fast by eating nothing but citrous fruit, apples, figs, pineapple, peaches, dates, berries—any fruit, in fact, except bananas. And continue to

*BoLAX is recommended when you feel the need for a mild, yet not harsh laxative. Insist on getting BoLAX, and refuse substitutes!

drink only distilled water, so as to get no elements other than those contained in the fruits themselves. This regime changes the intestinal flora, which is very beneficial in arthritis, and gives you more solid nourishment in preparation for a balanced diet. Needless to say, each night you should take the mild laxative in small doses.

The next step in your program is to aid nature in stimulating the healing processes of the body. Without rapid healing, quick return to normal health is not easily possible. The *Victory Healing Diet* was designed to help accelerate the body's healing mechanism. Here is the procedure, to be followed to the letter for five days—less than five days will not give you the results you want; more than five days is a waste of time.

Upon arising: Cup of Lelord Kordel's specially-treated Sarsaparilla Tea (or mint tea); 6 Fero-B-Plex tablets.

...

Before retiring: Cup of Lelord Kordel's Fenugreek Tea and two BoLax tablets. This is very important!

...

Care must be taken that sufficient vitamins are provided. Vitamin A—the anti-infection one—ought to be taken in large quantities, as it seems to help a great many cases of arthritis, particularly if they are such as have started from some focal infection like sinus trouble. Even more important are B, C and D.

B—which is of benefit in any sort of infection, and particularly if it happens to be in the intestinal tract (arthritis is certainly partly due to a toxic state of the intestines)—should be included. This can be derived from peas, lima beans, wheat germ, yeast, soybeans, whole grains and egg yolks. It is also found, to a large extent, in cabbage, carrots and tomatoes. Vitamin B-Complex tablets are also recommended.

... But fresh fruits and vegetables often do not furnish all the Vitamin C needed by the arthritic. If you think you are not getting enough vitamin C, we suggest a vitamin C concentrate in tablet form. An excellent one is called "Cetabs".

... plenty of vitamin D should be taken in order to enable the body to absorb the calcium which is to make

up the deficiency characteristic of rheumatoid arthritis. While on the subject of calcium, it is best to list those foods which are richest in it:

Minerals-Plus ***

Thus the diet for arthritis is one in which all devitalized products are conspicuous by their absence. *** Also, the arthritic should remember to drink a great deal of celery and cucumber juice during the course of each day— *** This cocktail has the desirable property of being able to act as a solvent on the calcareous deposits which have been formed between the two bones of the affected joints, thus facilitating the return of motion. It is also wise to drink the juice of a fresh lime in a glass of distilled water every time you are thirsty. This is a good specific for arthritis.

- 105 As the arthritic is forbidden meat protein *** On the whole, though the diet emphasizes the alkaline fruits and vegetables, as can be seen by the following suggested skeleton menus which the patient can use:

• Afternoon: *** an herb tea like Lelord Korde's Fenugreek Tea. ***

Before retiring: *** Cup of strong Fenugreek Tea.

*** Such a program as has been outlined in this booklet, however, has been found to be most efficient in a great number of cases, and there is no reason to suppose that it won't do you a lot of good if followed faithfully.

IMPORTANT! Many arthritics have reported wonderful results by using an herb tea that seems to be a splendid specific in helping arthritis and other rheumatic ailments. A cup should be drunk every other night—before retiring. Here is how to make this herb tea: Take one level tablespoonful of Fenugreek Tea and one level teaspoonful of Black Cohosh Root. Steep for 5 minutes in a cupful of boiling hot water. Strain. Sweeten with a teaspoonful of uncooked orange blossom honey; add a teaspoonful of lemon juice. Drink while still quite warm.

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then

and there misbranded within the meaning of said Act of Congress [21 U.S.C. 353(a)], in that the aforesaid statements appearing in the bulletins and booklets accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective to correct lack of vitality, poor appetite, indigestion, constipation, nervousness and irritability, and that said drug, when taken alone or in combination with other drugs mentioned in said booklets, to wit, "Leland Kordel's Penugreek Tea", "Lelord Kordel's Sarsaparilla Tea", "Cetabs", "Bolax" and "Minerals Plus", or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas, in truth and in fact, said drug would not be effective to correct lack of vitality, poor appetite, indigestion, constipation, nervousness, and irritability and said drug, when taken alone or in combination with said other drugs mentioned in said booklets, or with the diets recommended in said booklets, would not be effective 106 in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT V.

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Prouets and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to

wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g) (2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

MINERALS.

Plus Chlorophyll
& Vitamin D

Contains dicalcium phosphate, alfalfa, iron sulphate, irradiated yeast, potassium iodide, chlorophyll, sulphates of copper, cobalt, manganese, zinc, magnesium and nickel, magnesium trisilicate, lithium lactate, chlorides of sodium, potassium and strontium, sodium borate, sulphur, bismuth subnitrate, excipients to prepare.

100 Tablets—\$1.00

Lelord Kordel Products

Exclusive Distributors Chicago.

SIX TABLETS DAILY FURNISH.

Calcium	750 Milligrams
Phosphorous	580 Milligrams
Iron	30 Milligrams
Iodine	0.2 Milligrams
Copper	150 Micrograms
Vitamin D	600 U.S.P. Units
Chlorophyll	9 Milligrams

Plus 1 Milligram of Each of the Following:

•Manganese, Cobalt, Sodium, Sulphur, Potassium, Chlorine—daily requirements for which have not been established. Plus: Magnesium, Zinc, Nickel, Lithium, Boron, Strontium, Silicon and Bismuth—the exact need for which in human nutrition has not been established.

Directions: Six tablets furnish the following percentages of the minimum daily adult requirements: Calcium, 100%; Phosphorous, 75%; Iron, 300%; Iodine, 200% Vitamin D, 150%. Tablets may be chewed or swallowed whole; or crushed and added to fruit juices, milk, or other foods. In special cases, use as directed by physician.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for intro-

duction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drugs:

The cells of your body may require these 19 important minerals:

Calcium

The body's executive mineral. Helps to prevent poor memory, ulceration, bad teeth. It is of help in promoting stamina, endurance, will power, longevity. Acts as a coordinator among all minerals of the body. ***

Copper

*** stimulates the growth of red blood cells and aids in tissue respiration. Copper deficiency may be recognized by general weakness and impaired respiration. ***

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Silicon

Essential in growth of teeth and nails. Improves hearing. Immunizes against serious maladies. Builds resistance to tooth decay. Brightens eyesight, improves memory. Keeps skin from becoming flabby. ***

Phosphorous

May be termed the life-thought mineral. Consumed with every thought. Feeds nerves; counteracts fatigue. Needed badly by all who do any kind of mental or indoor work. Aids persons with a tendency to anemia. Regulates acid-alkaline balance. ***

Chlorine

Called the laundry man of the body; removes bodily poisons and helps in the distribution of hormones. Prevents excess weight. Keeps joints supple. Helps liver. ***

Potassium

Important in maintaining normal heart beat. Necessary for glandular secretions. Prevents constipation. Useful for flushing kidneys of waste products. Helpful in all female disorders. Potassium is known as the

healer, pain reliever. ***

Iron

The body's master mineral. Creates warmth, vitality, stamina, mental ability, magnetism. Individuals suffering from anemia, worry, dull memory—need large amounts of iron. ***

Sodium

Of utmost importance in neutralizing acidity. Known for its dissolving action on stones. Prevents catarrh. Promotes good cheer and a clear brain. Regulates distribution of calcium—thus preventing arthritis, stiff joints, etc. ***

Boron

Abnormal growth of certain cells in plant cells, so sudden as to be almost explosive, is caused when the plant is starved for Boron. The wild growth of some of the cells crowd others aside and disrupts the life processes. **

Iodine

The controlling mineral! *** nervous breakdown. A high iodine reserve gives mental energy, originality, pep and self-confidence. Helps check tonsillitis, overweight, weakness, etc. ***

Sulphur

The beauty mineral. It helps to tone the blood, making it difficult for disease to get a foothold in the body. Develops brain power; stimulates secretions of the liver; makes glossier hair. Valuable in rheumatic conditions. ***

Magnesium

Biochemists call this the cool, alkaline, refreshing, sleep-promoting mineral. Necessary for muscular activity. Helps to keep nerves relaxed and normally balanced. An activator of certain enzymes. Said to help prevent wrinkles. ***

Cobalt—Has been found to have remarkable effects on blood formation.

Manganese—Experiments indicate manganese to be a splendid nerve and brain tonic—stimulating to the memory.

Zinc—Seems to be involved in processes responsible for normal growth, tissue respiration and hair growth. Indirectly involved in the body-use of carbohydrates.

Nickel—***

Lithium—an important mineral.

Strontium—***

Bismuth—***

Chlorophyll

We know that Chlorophyll acts as a catalyst converting minerals into organic food to be used by the body. Science is daily learning new uses for Chlorophyll in human nutrition. Has been called the "life essence" of all living green plants. The exact needs in human nutrition are not completely known—but unquestionably, Chlorophyll in the diet is helpful. ***

To meet the need for a balanced mineral supplement containing 19 minerals (*** and Chlorophyll) *** It also contains 15 other minerals (mentioned in this chart) the exact needs for which in human nutrition have not been established, but considered important by many authorities.

To be on the safe side—to make sure you are getting needed minerals ***

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving the Agonies of Arthritis", which said booklets were shipped by said defendant to said Western Natural Foods Co., via Railway Express Agency, Inc., from Chicago, State of Illinois, to Seattle, State of Washington, prior to the date of shipment of said drug as aforesaid, to wit, on or about November 13, 1944, were, among other things, the statements relating to said drug, appearing in the booklets of the same title more fully described in the fourth count of this information, which said statements in said booklets in said fourth count set forth, are, by reference, hereby incorporated in this count;

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)], in that the statements, to wit, "Plus 1 Milligram of Each of the Following: Manganese, Cobalt, Sodium. Sulphur, Potassium, Chlorine—daily requirements for which have not been established. Plus:

Magnesium, Zinc, Nickel, Lithium, Boron, Strontium, Silicon and Bismuth—the exact need for which in human nutrition has not been established”, displayed upon the packages containing said food, as aforesaid, were misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said 110 drug was of nutritional significance by reason of the presence of the minerals, to wit, manganese, cobalt, sodium, sulphur, potassium, chlorine, magnesium, zinc, nickel, lithium, boron, strontium, silicon and bismuth, whereas, in fact and in truth, said drug was of no nutritional significance by reason of the presence therein of said minerals.

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was further misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)], in that the aforesaid statements appearing in the bulletins and booklets accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment and prevention of poor memory, ulceration, bad teeth, general weakness, impaired respiration, fatigue, obesity, liver disorders, stiff joints, nervous breakdown, tonsillitis, rheumatic conditions, impaired glandular function, constipation, and abnormal body cell growth, and that said drug, when taken alone or in combination with other drugs mentioned in said booklets, to wit, “Lelord Kordel’s Fenugreek Tea”, “Fero-B-Plex”, “Lelord Kordel’s Sarsaparilla Tea”, “Cetabs” and “Bolax”, or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas, in fact and in truth, said drug would not be effective in the treatment and prevention of poor memory, ulceration, bad teeth, general weakness, impaired respiration, fatigue, obesity, liver disorders, stiff joints, nervous breakdown, tonsillitis, rheumatic conditions, impaired glandular function, constipation, and abnormal body cell growth and said drug, when taken alone or in combination with said other drugs mentioned in said booklets, or with the diets recommended in said booklets, would not be effective in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

111

COUNT VI

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 321 (a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321 (g) (2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

BOLAX

List of Ingredients on Other Side

40 Coated Tablets—Price 50¢

**DISTRIBUTED BY KORDEL PRODUCTS—
CHICAGO**

Contains Powdered Senna Leaves, Uva Ursi Ursi Leaves, Buckthorn Bark, Licorice Root, Red Clover Tops, Coriander Seed, Elder Flowers, Pale Rose Buds, Peppermint Leaves, African Ginger Root, Fennel Seed, Mexican Saffron, Anise Seed, Cyani Flowers and excipients to prepare.

DIRECTIONS: Adults—One or two tablets, as needed. Children—one-half to one tablet or less, in proportion to age.

112 NOTE: This or any laxative is not to be used when severe or persistent abdominal pain, cramps, nausea, vomiting or other symptoms of appendicitis are present. Consult your physician in these cases.

To avoid any possibility of forming the laxative habit; use this preparation only when necessary.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "Nutrition Guide", which said booklets were shipped with said drug, were, among other things, the following statements regarding said drug:

*** the procedure for the PURIFYING DIET:

Night before: Two BoLAX Tablets

Before retiring: Two BoLAX Tablets.

You will find that, by taking this PURIFYING DIET one day every two weeks, your body will be much stronger, your mind will be more alert, and you will be able to work much better, as you will be freed of the accumulated toxins which may have slowed you down.

***The result is acidosis, symptomized by headaches, fatigue and heartburn, drowsy days and sleepless nights; in later years hardening of the arteries and high blood pressure. There is a tendency toward colds, constipation and lack of appetite.

• While the body can throw off a normal amount of acid waste, the kidney function is retarded when overloaded by a residue of acid-ash. Accumulating wastes acidify the blood which distributes the toxins throughout the body. This condition develops with unforeseen speed from diet excesses, alike among vegetarians (who depend on cereals and breads) and meat-devotees.

To overcome an acid condition or to ward it off, choose a diet with a favorable alkaline balance. The 20-80 DIET was developed for this very purpose. ***

Followed once every six months (or oftener), this program will alkalize the system and permit it to deal more efficiently with the ordinary diet. ***

THE 20-80 DIET—

FIRST DAY *** finish off with Bolax, as suggested.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving the Agonies of Arthritis," which said booklets were shipped by said defendant to said Western Natural Foods Co., via Railway Express Agency, Inc., from Chicago, State of Illinois, to Seattle, State of Washington, prior to the date of shipment of said drug as aforesaid, to wit, on or about November 13, 1944, were, among other things, the statements relating to said drug, appearing in the booklets of the same title more fully described in the fourth count of this information, which said statements in said booklets in said fourth count set forth, are, by reference, hereby incorporated in this count;

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)], in that the aforesaid statements appearing in the booklets accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug, when taken alone, or in combination with other drugs mentioned in said booklets, to wit, "Lelord Kordel's Fenugreek Tea", "Fero-B-Plex", "Lelord Kordel's Sarsaparilla Tea", "Cetabs", and "Minerals Plus" or with the diets recommended in said booklets would be effective in the treatment of arthritis, that said drug would be effective in the treatment of acidosis, colds, lack of appetite, and constipation, whereas, in fact and in truth, said drug, when taken alone or in combination with said other drugs mentioned in said booklets or with the diets recommended in said booklets, would not be effective in the cure, mitigation, treatment and prevention of arthritis, and said drug would not be effective in the treatment of acidosis, colds, lack of appetite, and constipation but would be of value only in the temporary relief of constipation.

All of which was and is contrary to the form of the Statute in such case made and provided against the peace and dignity of the United States of America.

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COUNT VII

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that LeLord Kordel, an individual, trading under the names, LeLord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act §52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

**KORDEL
TABLETS**

(IMPROVED FORMULA)

A NON-SPECIFIC FOOD ADJUNCT

Each Tablet Contains Sodium Citrate, Black Cohosh Root, Poke Root, Natural Oil Of Wintergreen Together With Excipients to Properly Prepare.

100 Colored Coated Tablets—\$2.00

LeLORD KORDEL PRODUCTS

Exclusive Distributors • Chicago

Directions: For best nutritional results, take 2 KORDEL TABLETS before or after each meal with 8 oz. glass of water or fruit juice, preferably unsweetened grapefruit juice.

For children over four years, reduce intake to one-half or less, or as directed by physician.

115 That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled "Health

Today Spring 1945', which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

**STABBED IN THE BACK BY ARTHRITIS!
ARTHRITIS AND RHEUMATISM SUFFERERS.
HERE IS AN EASY FOOD ADJUNCT WAY TO
HELP PALLIATE AND BELIEVE AGONIZING
PAIN DISTRESS**

Now is the time of year when Arthritis is on the loose, stabbing victim after victim with its deadly dagger of pain. If you are one of these unfortunate people, here is important information for you to know. Many people suffering from nagging arthritis pains in back, knees, shoulders and hands never suspect that these pains may be caused, in some cases, by excessive acids within the body.

As a dietary aid in the faster neutralization of these excessive acids which in turn may tend to bring speedier pain relief to this extent, KORDEL TABLETS were designed *** not a magic cure-all, but an effectively helpful combination of scientifically blended ingredients, each well known to medical or herbal science.

If *** KORDEL TABLETS do not help to palliate and relieve your agonizing aches and pains due to Arthritis, Rheumatism, Sciatica, Neuralgia, Lumbago

**FROM WHICH TYPE OF RHEUMATIC PAIN DO
YOU SUFFER?**

**ARTHRITIS—NEURITIS ** MUSCULAR RHEU-
MATISM ** SCIATICA**

*** you may be amazed at the soothing relief to your aching joints and muscles which these tablets may help to bring about. ***

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of

Congress [21 U.S.C. 352 (a)], in that the statements, to wit, "A Non-Specific Food Adjunct . . . For Best Nutritional Results", displayed upon the packages containing said drug as aforesaid, were false and misleading in this, that the said statements represented and suggested and created the impression in the mind of the reader that said drug 116 was a food adjunct, and that said drug would provide ingredients of nutritional significance, whereas, in fact and in truth, said drug was not a food adjunct and it would provide no ingredients of nutritional significance;

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was further misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)]; in that the aforesaid statements appearing in the bulletin accompanying said food as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment of arthritis, rheumatism, sciatica, neuralgia, lumbago, and aching joints and muscles, whereas, in fact and in truth, said drug would not be effective in the treatment of arthritis, rheumatism, sciatica, neuralgia, lumbago, and aching joints and muscles.

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT VIII.

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U. S. C. 331 (a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State 117 of Illinois, to Seattle, State of Washington, consigned

to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of capsules of a drug within the meaning of 21 U. S. C. 321 (g) (2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

EVERM

WHEAT GERM OIL CAPSULES

One Of The Richest Natural Sources of Vitamin E
50 Gelatine Capsules - \$1.00

DISTRIBUTED BY LELORD KORDEL PRODUCTS—
CHICAGO.

EVERM CAPSULES are specially processed and refined for dietary use. They are obtained from the germinative or the regenerative parts of the wheat berry. Standards and need for Vitamin E in human nutrition have not been definitely established.

AVERAGE DOSE: Two to three capsules daily. In cases of pronounced Vitamin E deficiency, larger doses may be necessary, as prescribed by physician. Place capsules on tongue and drink down with half glass water. (Keep these capsules in a cool, dry place).

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

VITAMIN E REVEALED AS A LIFE PROCESS KEY ***

Vitamin E is commonly identified as the fertility vitamin, a potent chemical substance which by its

abundance or deficiency determines whether a living organism will be able to reproduce. *** Chief among the other activities is the ability to protect and extend the action of other vitamins in the intestinal tract and in the organs of the body. In the presence of vitamin E, vitamin A for instance, is much more beneficial.***

VITAMIN E AND HEART FAILURE.

During deficiency experimentation with animals it is not uncommon for an animal to die unexpectedly from heart failure. Various explanations may be given, but it is believed that a lack of vitamin E is generally responsible. This lack may have a bearing on some cases of human heart degeneracy.

VITAMIN E AND PARALYSIS.

A sensational use for Vitamin E has recently been found *** He thought that this might have some effect upon reproduction but, to his amazement what actually happened was that the animals became paralyzed. When Vitamin E is restored to the diet, the paralysis disappears. It has, therefore, been used in human medicine, given to people with various forms of paralysis. In one form at least it has proved of spectacular benefit, the cases being completely restored to health.

VITAMIN E AND MUSCLES.

Vitamin E was found helpful in the treatment of some diseases of the muscles. ***

OTHER FUNCTIONS OF VITAMIN E.

There are studies, preliminary in a way, which prove that Vitamin E profoundly affects the keenness of the mind and intellect. A Vitamin E-starved child is a dullard. A Vitamin E-surfeited child is bright, alert, vigorous and mentally responsive. Everyone knows that fullness of normal reproductive physiology and long life and mental vigor are eternal companions. Not that sex lust is a mark of normal living; but full physiologic vigor in matters having to do with reproduction can only be possible when the body is at its very pink of superlative condition. Vitamin E certainly has to do with that.

The mistake is in the belief that because the race is reasonably fertile, it need not concern itself with Vitamin E. *** There should be no limit to the effort to insure finer and better children. Every attempt should

be made to eradicate dull minds, asylum parasites, mental and bodily weaklings, timorous and sexual freaks.

... many authorities believe that in certain cases of human sterility the deficiency of Vitamin E plays an important role. It has been reported that when this vitamin is given in concentrated form it has been highly successful in the treatment and prevention of repeated abortions and miscarriages. ...

EVERM Capsules are one of the richest natural sources of the important Vitamin E. Each capsule contains 3 minims of Vitamin E-rich natural oils. ...

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "Nutrition 119 Guide", which said booklets were shipped with said drug, were, among other things, the following statements regarding said drug:

VITAMIN E: Vitamin E is one of the newer vitamins ... a necessary factor in growth after sexual maturity. Essential to normal reproduction; necessary to the germinal epithelial structure in the male and in the placental function of the female. Vital to normal muscle structure. Has been used successfully in treating certain types of sterility. ...

... When Vitamin E was restored to the diet, the paralysis disappeared. It has, therefore, been used in human medicine, given to people with various forms of paralysis. In one form at least it has proved of spectacular benefit, the cases being completely restored to health.

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U. S. C. 352 (a)], in that the statements, to wit, "Average Dose: Two to three capsules daily. In cases of pronounced Vitamin E deficiency larger doses may be necessary", displayed upon the packages containing said drug, as aforesaid, were misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that there are definite disease conditions in man recognized as due to Vitamin E de-

iciency in which said drug would be an effective treatment, whereas in fact and in truth, there are no definite disease conditions in man recognized as due to vitamin E deficiency in which said drug would be an effective treatment;

The said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was further misbranded within the meaning of said Act of Congress [21 U. S. C. 352 (a)], in that the aforesaid statements appearing in the bulletins and booklets accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment and prevention of heart failure, paralysis, muscular diseases, mental disorders, impotency, reproductive disorders, and infertility, where-
120 as in truth, and in fact, said drug would not be effective in the treatment and prevention of heart failure, paralysis, muscular diseases, mental disorders, impotency, reproductive disorders, and infertility;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT IX

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names of Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of capsules of a drug within the meaning of 21 U.S.C. 321 (g)(2);



That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

KORDEL-A

Each Capsule Contains Not Less Than 25,000 U.S.P. Units Vitamin A Extracted From Refined Natural Fish Liver Oils.

30 Gelatine Capsules—\$2.00

DISTRIBUTED BY LE LORD KORDEL PRODUCTS—CHICAGO

121 DAILY VITAMIN A REQUIREMENTS

The Daily requirement of Vitamin A for individuals past the age of 13 is approximately 4000 units. The requirement for children, pregnant and lactating women varies from 1500 to 8000 units daily.

DIRECTIONS: As a Vitamin A dietary supplement, one to two capsules weekly should prove sufficient. Where an actual Vitamin A deficiency is known to exist, larger amounts may be taken as directed by your physician. One KORDEL-A capsule furnishes approximately 6 times the minimum daily adult requirement of Vitamin A (with excipients to properly prepare). Keep capsules in a cool, dry place.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled: "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

YOUR EYESIGHT FAILING?

MAYBE YOUR DIET IS DIMMING YOUR SIGHT

MANY PEOPLE NEED MORE VITAMIN "A".

"THE EYE SIGHT VITAMIN" (Picture of woman holding her eyes)

This woman suffers from Vitamin A starved eyes.

Her eyes are unnaturally dry and her eyelids are red and swollen. She is blind in a dim light and when she is suddenly faced with a bright light, she cannot see for long moments. If Vitamin A is added to her diet, she will benefit immensely. You may have read in the newspapers that RAF flyers in England are being given Vitamin A foods and capsules for their eyes. In industrial plants in this country tests have proved the value of adding extra Vitamin A to the diets of workers whose work required the matching of colors and Vitamin A relieved color blindness in one test by 50%.

*** This pigment plays a very important part in the sharpness of your sight especially in the ability of your eyes to adapt from bright light to dim.

*** He may, at first, only laugh at himself when he stumbles over his neighbor's feet as he enters a darkened theatre. It is anything but a laughing matter, however, when a pair of Vitamin-A starved eyes readjust too slowly after being dazzled by the light of a passing car and a crash results!

122 "Investigators at Harvard and Columbia Universities have discovered that a great many apparently normal people suffer from this nutritional night blindness."

A well known newspaper medical writer, wrote recently in one of his daily health columns, "Thousands of people who, whether they are aware of it or not, suffer from moderate deficiency in daily intake of Vitamin A, are more than normally sensitive to glare, if not obviously affected with night-blindness. Such persons commonly have other eye symptoms which are due to Vitamin A deficiency—notably dryness and irritation as though by dust or sand—and many have also the characteristic rough, dry, nutmeg grated skin, and more or less chronic gooseflesh-like rash which is sometimes mistaken for acne. Instead of wearing cheaters these people should supplement their regular diet with Vitamin A in adequate amount. Not synthetic carotene, but natural Vitamin A, say 50,000 International units daily for a month—two capsules each containing 25,000 units. This can do no possible harm in any case and is likely to improve general well being, and frequently corrects the eye trouble in the course of a few months."

PIGS BORN BLIND ***

The warning is that if prospective mothers do not get adequate Vitamin A their babies are likely to have weak eyes. There probably will be nowhere any epidemic of blind babies for a reason the Texas experiments showed clearly. The defect will be more insidious, eyes imperfectly formed, resulting in poor vision in later life. ***

Poor vision.

Eyes sensitive to glare.

Can't see in dim light (night blindness)

Red and swollen eyelids.

Squinting.

Dryness of eyes.

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. §352(a)], in that the aforesaid statements appearing in the bulletin accompanying said drug as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the cure, mitigation, treatment and prevention of failing eye sight, red and swollen eyelids, squinting of eyes, color blindness, acne and other skin disorders, and that defective eyes in infants are frequently due to inadequate intake of vitamin A by the mothers, whereas, in truth and in fact, said drug would not be effective in the cure, mitigation, treatment and prevention of failing eyesight, red and swollen eyelids, squinting of eyes, color blindness, acne and other skin disorders, and defective eyes in infants are not frequently due to inadequate intake of vitamin A by the mothers;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT X

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the

defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, within the period from on or about January 22, 1945, to on or about February 25, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

**LELORD KORDEL'S
FENUGREEK
TEA**

Consists of Fenugreek Seeds
Selected for Purity and Flavor
One Pound Net—Price \$1.50

LELORD KORDEL PRODUCTS

Exclusive Distributors Chicago

124 DIRECTIONS FOR PREPARING: Use two teaspoonfuls for each cup of rapidly boiling water. Steep about five minutes—longer if you wish a more pronounced flavor. Strain. May be sweetened with honey to taste. A few drops of lemon juice will further improve flavor.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled: "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

STOMACH AGONY!

UPSET STOMACH! SOUR TASTE IN MOUTH!

GAS PAINS? HEARTBURN? ACID-INDIGESTION? BELCHING? BLOATING?

Try FOR AMAZING RELIEF With FENUGREEK TEA

FENUGREEK is a natural herb that has given results to many when other methods seemingly failed. It has been said that FENUGREEK TEA is "A Cup of Good Health from the Good Earth."

A cup of this very pleasant tea is taken before meals (and upon retiring). This mixes with the food in one's stomach, thus helping to absorb by solvency, the poisons that may sometimes foster stomach troubles. It thus often acts quickly to stop gas pains, sourness, bloating and belching.

Being a liquid mucus-solvent, FENUGREEK TEA naturally tends to flush out thick stagnant bile and also to assist flushing of kidneys.

If you are constipated: Try FENUGREEK TEA a half hour before breakfast. While not a laxative, this may help to stimulate more normal intestinal activity.

FENUGREEK TEA helps flush out impurities which may have been inside you a long time. By helping to dissolve excess mucus, it can make your digestive organs feel sweet and clean. Try it today! Lelord Kordel's Fenugreek Tea is never sold in bulk!

If your physician has placed you on an ulcer or colitis diet, you'll enjoy the soothing effects of FENUGREEK TEA.

1: Headaches, backaches, and that tired-out feeling are often caused by toxic poisons that may enter the blood stream because of pockets of impurities in the intestinal tract. 2: The liver, when sluggish and inactive, slows down the "bile flow" causing headaches and lack of energy. Instead of using often harmful "liver pills" try Fenugreek Tea—it's a natural herb. 3: Impurities (acid and slime deposits) in kidneys are common causes of so-called rheumatic and neuritis pains and general physical debility. The kidneys are composed of 15 miles of delicate tubing. Try cleansing

125 the kidneys with Fenugreek!

(Picture of stomach) **DEEP-SEATED IMPURITY**

The stomach lining is a series of small pits. Impurities cling in these pits, often causing various disorders. The regular use of Fenugreek Tea will very often help to cleanse these deep-seated impurities.

QUOTATIONS From Eminent Authorities on the Actions of Fenugreek

*** "The decoction or broth (tea) of the seed expels and purges all superfluous humours which may cleave to the bowels . . . cleanses the breast, chest and lungs and may be taken with success for any complaint thereof. It is of a softening and dissolving nature . . . consumes, softens and dissolves hard swellings and imposthumes . . . softens and wastes the hardness and swellings of the spleen. It is good for women who are afflicted with an imposthume, ulcer, or stoppage of or in the matrix . . ."

*** "The Tea (of Fenugreek) is an excellent gargle for sore throat. The seed is jelly-like when moistened and has a very cooling effect on the bowels, lubricates the intestines, and is very healing. The tea is excellent taken in fevers."

*** "Reputed equal in virtue to quinine for fevers; mucilaginous material from soaking in water for inflamed stomachs and intestines; decreases nauseating and griping effects of purgatives."

*** Fenugreek as Anti-Phlogistic (i.e., an agent for reducing inflammation) as well as Mucilaginous. Both classifications would indicate that Fenugreek used as a tea is ideal as a soothing and healthful beverage for ulcers, colitis, and other internal inflammations.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets, entitled "Nutrition Guide", which said booklets shipped by said defendant to said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, on or about January 22, 1945, were, among other things, the following statements regarding said drug:

*** the procedure for the PURIFYING DIET:

...

9 A. M.: Cup of Fenugreek Tea ...

1 P. M.: Cup of Fenugreek Tea ...

5 P. M.: Cup of Fenugreek Tea ...

9 P. M.: Cup of Fenugreek Tea ...

You will find that, by taking this **PURIFYING DIET** one day every two weeks, your body will be much stronger, your mind will be more alert, and you will be able to work much better, as you will be freed of the accumulated toxins which may have slowed you down.

... The result is acidosis, symptomized by headaches, fatigue and heartburn, drowsy days and sleepless nights; in later years, hardening of the arteries and high blood pressure. There is a tendency toward colds, constipation and lack of appetite.

- 126 While the body can throw off a normal amount of acid waste, the kidney function is retarded when overloaded by a residue of acid-ash. Accumulating wastes acidify the blood which distributes the toxins throughout the body. This condition develops with unforseen speed from diet excesses, alike among vegetarians (who depend on cereals and breads) and meat devotees.

To overcome an acid condition or to ward it off, choose a diet with a favorable alkaline balance. The **20-80 DIET** was developed for this very purpose. ...

Followed once every six months (or oftener), this program will alkalinize the system and permit it to deal more efficiently with the ordinary diet. ...

GENERAL DAILY INSTRUCTIONS

...

BREAKFAST: ... cup of Lelord Kordel's Fenugreek Tea, ...

BEFORE RETIRING: Cup of Lelord Kordel's Fenugreek Tea. ...

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "Twenty Short Lessons in the Art of Relaxation", and upon a window display placard headed "Stomach Agony", which said booklets and said placard, were shipped by said defendant to said Western Natural Foods Co., via Railway Express Agency, Inc., from Chicago, State of Illinois, to Seattle, State of

Washington, prior to the date of shipment of said drug, as aforesaid, to wit, within the period from on or about October 9, 1944 to on or about November 25, 1944, were, among other things, the following statements regarding said drug:

STOMACH AGONY!

SOUR TASTE IN MOUTH? GAS PAINS? UPSET STOMACH? INTESTINAL IRRITATIONS? BELCHING? COLITIS? ULCERS?*

Try FOR AMAZING RELIEF with FENUGREEK TEA

FENUGREEK TEA ***

***** FENUGREEK TEA is "A Cup of Good Health from the Good Earth."**

******* mixes with the food in one's stomach, thus helping to absorb by solvency, the poisons that may sometimes foster stomach troubles. It thus often acts quickly to stop gas pains, sourness and belching. Being a liquid mucus solvent it naturally tends to flush out thick stagnant bile and also to assist flushing of kidneys. *******

If you are troubled with an excess mucus condition . . . if you cough-up an embarrassing amount of catarrhal phlegm—if your stomach is upset as a result of too much mucus, you will certainly be interested in experimenting with FENUGREEK TEA to see if you can eliminate this condition.

***** FENUGREEK TEA** helps flush out impurities which may have been inside you a long time. By helping to dissolve excess mucus, it can make your digestive organs feel sweet and clean.

127. *If your physician has placed you on an ulcer or colitis diet you'll enjoy the soothing effects of FENUGREEK TEA.

(Picture of stomach—DEEP-SEATED IMPURITY)

The stomach lining is a series of small pits. Impurities cling in these pits, often causing serious disorders. The regular use of Fenugreek Tea will very often help to cleanse these impurities.

******* "Fenugreek is reputed equal in virtue to quinine for fevers; mucilaginous material from soaking in water for inflamed stomachs and intestines decreases nauseating and griping effects of purgatives.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving the Agonies of Arthritis", which said booklets were shipped by said defendant to said Western Natural Foods Co., via Railway Express Agency, Inc., from Chicago, State of Illinois, to Seattle, State of Washington, prior to the date of shipment of said drug as aforesaid, to wit, on or about November 13, 1944, were among other things, the statements relating to said drug appearing in the booklets of the same title more fully described in the fourth count of this information, which said statements in said booklets in said fourth count set forth, are, by reference, hereby incorporated in this count;

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)], in that the aforesaid statements and designs appearing in the bulletins, booklets, and display placard accompanying said drug as aforesaid, were false and misleading in this, that the said statements and designs represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment and prevention of stomach upsets, sour taste in mouth, gas pains, heartburn, hyperacidity, belching, bloating, liver disorders, rheumatic and neuritic pains, debility, ulcers, colitis, internal inflammations and acidosis, and that said drug, when taken alone or in combination with other drugs mentioned in said booklet, to wit, "Lelord Kordel's Sarsaparilla Tea," "Fero-B-Plex", "Bolax", "Cetabs", and "Minerals Plus" or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas, in truth and in fact, said drug would not be effective in the treatment of stomach upsets, sour taste in mouth, gas pains, heartburn, hyperacidity, belching, bloating, liver disorders, rheumatic and neuritic pains, debility, ulcers, colitis, internal inflammations and acidosis, and said drug, when taken alone or in combination with said other drugs, mentioned in said booklets, or with the diets

recommended in said booklets, would not be effective in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT XI

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

129. That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

LELORD KORDEL'S GARLIC-PLUS

50 Coated Tablets—Price 75c

SEE OTHER SIDE FOR INGREDIENTS
DISTRIBUTED BY LELORD KORDEL PRODUCTS—CHICAGO

EACH TABLET CONTAINS DEHYDRATED GARLIC, PARSLEY, WATERCRESS AND EXCIPIENTS TO PREPARE. CERTIFIED COATING COLOR USED.

ADULT DIRECTIONS (As a diet supplement). Two tablets with each meal. Less may be taken as desired. Note—A difference in medical opinion exists concern-

ing the value of garlic tablets in easing distress of high blood pressure. In favor of such value are the opinions of experts qualified by scientific training to evaluate.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins entitled: "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

AID RELIEF OF DIZZINESS AND HEAD-ACHES DUE TO HIGH BLOOD PRESSURE WITH "GARLIC-PLUS" TABLETS (Garlic, Parsley & Watercress)

The Continued Use of "GARLIC-PLUS" Tablets at Prescribed Intervals May Be Valuable in Allaying Certain Symptoms due to High Blood Pressure.

*** They are to be considered, at all times, only an aid to the relief of the painful headaches and dizziness caused by High Blood Pressure.

- 130 The ingredients in "GARLIC-PLUS" Tablets (especially garlic) have been successfully used (see excerpts from leading scientific journals below) in lowering High Blood Pressure in some cases, if they were taken continuously at prescribed intervals.

If you suffer from the torturing pains of High Blood Pressure and Hardening of the Arteries try "GARLIC-PLUS" Tablets, as have thousands of others. "GARLIC-PLUS" Tablets provide the fullest benefits of garlic without lingering after-effects. Through the use of a special process and their coatings, they are almost without taste or odor and may be taken freely without distaste or offense to others.

"GARLIC-PLUS" Tablets provide an easy and quick means of aiding relief of dizziness and headaches caused by High Blood Pressure in some cases. These

tiny coated tablets are free from all dangerous drugs, and may be carried in purse or pocket to be taken at any convenient time.

Years of clinical and experimental research (see reports from scientific journals below) show that garlic may cause a marked fall in abnormal blood pressure in some cases, if it is taken continuously at prescribed intervals.

Besides garlic, "GARLIC-PLUS" Tablets also contain concentrates of parsley and watercress. ***

CHECK THESE SYMPTOMS OF HIGH BLOOD PRESSURE

Dizziness.

Headaches due to pressure within the head.

Pressure pains in the back of the neck.

Shortness of breath on walking up stairs or climbing hills.

Pain in the region of the heart.

Sleeplessness.

Difficulty in concentrating.

REPORTS FROM MEDICAL SCIENTISTS SHOWING THE VALUE OF GARLIC IN THE TREATMENT OF HIGH BLOOD PRESSURE AND RELATED CONDITIONS.

GARLIC LOWERS BLOOD PRESSURE.

"An aqueous solution of garlic was injected in dogs which resulted in a rapid drop in blood pressure due to stimulating of the vagus nerve. Later on the blood pressure was lowered by an action on the blood vessels." ***

RELIEF FOR DIZZINESS AND SHORTNESS OF BREATH

"The author in question then prescribed daily doses (garlic) for one week, followed by seven days' rest. Others confirmed these observations, asserting that great relief was noticed in annoying manifestations such as dizziness, numbness, shortness of breath, and the formation of gas within the digestive tract." ***

ANOTHER REPORT ON GARLIC

"Garlic was used in the treatment of 25 cases involving high blood pressure. Good results were obtained in the majority of cases."

"The heart cases experienced relief from the symp-

toms accompanying high blood pressure after one or two months of treatment. The treatment was continued from eight to ten months." ...

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352(a)], in that the aforesaid statements appearing in the bulletin accompanying said 131 drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment of high blood pressure, headaches, dizziness, shortness of breath, heart pains, sleeplessness and inability to concentrate, whereas, in fact and in truth, said drug would not be effective in the treatment of high blood pressure, headaches, dizziness, shortness of breath, heart pains, sleeplessness, and inability to concentrate;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT XII

And the said Attorney for the United States, in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names, Lelord Kordel Products, and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about January 22, 1945, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331(a)], unlawfully introduce and deliver for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, consigned to Western Natural Foods Co., a certain consignment, to wit, a number of packages, each package containing a number of tablets of a drug within the meaning of 21 U.S.C. 321(g)(2);

That displayed upon said packages, when introduced and

delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

132

NIAMIN

Each Tablet Contains Not Less Than Ten Milligrams of Niacin (Amide), Yeast, And Excipients to Prepare.

50 Tablets—\$1.00

Distributed By Lelord Kordel Products—Chicago
Adult Directions (As a Supplement To The Diet):
One Tablet Per Day At Mealtime. (Amount of Niacin Needed Per Day Has Not Been Officially Established).
Where An Actual Niacin Deficiency Is Known To Exist, Larger Amounts May Be Taken As Directed By Your Physician. (Certified Coating Color Used).

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed bulletins, entitled: "Health Today Spring 1945", which said bulletins the said defendant caused to be shipped by the National Printing and Publishing Company to the said Western Natural Foods Co., via Universal Carloading & Distributing Co., Inc., from Chicago, State of Illinois, to Seattle, State of Washington, subsequent to the date of shipment of said drug, to wit, on or about February 27, 1945, were, among other things, the following statements regarding said drug:

THE FACTOR SAID TO BE MOST ESSENTIAL IN SOME CASES OF HEART AILMENTS: HEAD-ACHES: HIGH BLOOD PRESSURE Due to Nervousness A SIGNIFICANT new treatment for heart attack, Niacin came to light recently. Niacin is necessary to prevent the skin ailment known as pellagra; has been found to check heart attacks due to angina pectoris, a most painful heart malady. Also, this vitamin has produced some spectacular cures in cases of cerebral thrombosis, the blocking of the blood vessels of the brain with blood clots or plugs.

These new developments are revealed in *Lancet*, official publication of the British Medical Association. The work on heart disease was done by the British medical scientist, Dr. Alan Moncrieff, now on war duty. This physician gave ten to fifty milligrams of pure

niacin to a number of his patients suffering from frequent and violent heart attacks, anginal attacks. His results show:

- 133 "The number of attacks has been reduced in a gratifying manner." It is the feeding of niacin between the attacks that is most helpful in such cases. Further research will show the desired range of the new treatment. The clearing up of the blood clot in the brain by niacin was first accomplished by Dr. Diogo Furtado of the University of Lisbon (Portugal).

NIACIN OFTEN RELIEVES HEADACHES

Promising results in the treatment of migraine headaches with niacin, and similar encouraging results with the same vitamin in the treatment of another baffling disease known as Meniere's syndrome, characterized by severe spells of dizziness, ringing in the ears and deafness, were reported recently before the annual meeting of the American Medical Association by Dr. Miles Atkinson of New York City.

Dr. Atkinson presented evidence indicating that both diseases were identical insofar as the mechanism of their production is concerned. Both conditions, he finds, are due to a dysfunction of the blood vessels.

What is even more important, he observed for the first time that there are two distinct groups in which the two diseases manifest themselves. In one group, he found, the symptoms are due to an allergy (sensitivity) on the part of the patient to histamine (a powerful body chemical) or some other substance.

In the second group the condition is the result of constriction of the blood vessels, resulting in periodic spasms in the vessels, with consequent effects either on the labyrinth of the ear (causing the dizziness in the Meniere's disease) or on certain regions in the brain (resulting in the severe headaches in migraine).

Dr. Atkinson stressed the point that the effect of niacin is not the result of the relief of a vitamin deficiency but is wholly due to its role as a dilator of the blood vessels. He further emphasized the necessity for the accurate grouping of the two types of cases.

NIACIN IN HIGH BLOOD PRESSURE

A certain common type of high blood pressure seems to be linked to "nerves" and nervousness. Your nerves

may actually make your blood vessels taut and so elevate the blood pressure.

If you are like most nervous people, you have probably blamed every conceivable circumstance for your symptoms of nervousness—except the right one: improper choice of foods.

Yet the foods you eat have more to do with the health and "strength" of your nerves than any other single factor. Your nerves need special nourishment—a supply of particular chemicals from the food you eat.

If they don't get what they need, they misbehave.

Nerves "on edge" may disturb your emotional stability to the extent that blood pressure rises as though you were in the heat of anger. The production of certain internal secretions, such as those of the adrenal glands, may be increased by "nervousness" and so raise the blood pressure to sometimes dangerous heights.

Your nerves need particular amounts of certain vitamins . . . and the more you use your nerves, the more of these vitamins you need. Among the vitamins which are important in helping to relieve high blood pressure, is **NIACIN**.

If you are not getting enough niacin, the deficiency may cause such symptoms of disturbed tissue and organ functioning as twitchings and the desire to move about and fidget, and a finicky and temperamental appetite.

But even more important niacin-starved nerves may result in the mental and emotional stresses we just discussed, and so may cause some of the blood vessels in your body to become so tense that your blood pressure "goes up."

134 The more your nerves are subjected to stress, the more niacin you will need. Niacin, then, may be of great importance in relieving high blood pressure caused by "disordered nerves".

NIACIN IN EDEMA OF KIDNEY ORIGIN

Recently, J. W. Daniel reported a number of cases of a kidney deficiency, accompanied by a dropsical condition. The malady is termed "nephrosis" and is characterized by the collection of fluid, particularly in the legs. He believes that the difficulty is primarily a disease of the kidneys, but is due to a breakdown of

metabolism which in some instances, is brought on by a vitamin shortage. He holds that the first deterioration occurs on the part of the liver, which is unable to condition properly the nutriments absorbed from the digestive tract. In consequence, toxins are allowed to enter the blood stream and reach the renal organs. What is his plan of treatment? He administers substantial doses of vitamin C plus niacin, and continues these food accessories indefinitely. Of the 50 patients whom he managed in this way, many reacted favorably. Those with whom improvement failed to come were well advanced in age and had had nephritis for a long period of time.

NIACIN FOR FATIGUE

If you tire easily while doing hard physical work or exercise, you might take a lesson from the experiments of Dr. I. M. Frankau, reported in the British Medical Journal. He has found that healthy young men suffer less fatigue and retain physical efficiency longer when they get generous amounts of niacin.

These results were obtained from tests on a group of young men who were given severe physical tasks and exercises to perform. During various exertions they were given niacin in different amounts. The tests showed unmistakably that niacin lessened fatigue and increased efficiency.

SOURCES OF NIACIN

Although Niacin is found in wheat germ, brains, liver, lentils, avocados and many other foods, it has been discovered that many people do not take advantage of these foods to obtain the Niacin they may need. It has also been found that many of the vitamin preparations on the market today do not supply the individual with enough Niacin.

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)], in that the aforesaid statements appearing in the bulletins accompanying said drug, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug would be effective in the treatment of heart ailments, angina pec-

toris, cerebral thrombosis, headaches, dizziness, ringing in the ears, deafness, allergies, high blood pressure, nervousness, poor appetite, irritability, kidney disorders and fatigue, whereas, in fact and in truth, said drug would not be effective in the treatment of heart ailments, angina pectoris, cerebral thrombosis, headaches, dizziness, ringing in the ears, deafness, allergies, high blood pressure, nervousness, poor appetite, irritability, kidney disorders, and fatigue;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT XIII

And the said Attorney for the United States in manner and form as aforesaid, also gives the Court here to understand and be informed that Lelord Kordel, an individual, trading under the names Lelord Kordel Products and Nutrition Enterprises, at Chicago, State of Illinois, the defendant herein, did, within the Eastern Division of the Northern Judicial District of Illinois and within the jurisdiction of this Court, on or about October 16, 1944, then and there, in violation of the Act of Congress known as the Federal Food, Drug, and Cosmetic Act [52 Statutes at Large, 1040; 21 U.S.C. 331 (a)], unlawfully introduce and deliver for introduction into interstate commerce, via Railway Express Agency, Inc., from Chicago, State of Illinois, to San Francisco, State of California, consigned to Rosenberg's Original Health Food Store, a certain consignment, to wit, a number of packages, each package containing a drug within the meaning of 21 U.S.C. 321 (g)(2);

That displayed upon said packages, when introduced and delivered for introduction into interstate commerce, as aforesaid, was the following printed and graphic matter:

**LELORD KORDEL'S
SARSAPARILLA
TEA**

Consists of Sarsaparilla Root,
U. S. P., With Sassafras Bark
1 3/4 Ounces Net—Price 50¢

LELORD KORDEL PRODUCTS
Exclusive Distributors Chicago

136 DIRECTIONS: To make a delicious and refreshing beverage, use one to one-and-a-half teaspoonfuls for each cup of rapidly boiling water. Steep five minutes. Strain. May be sweetened with honey to taste.

That displayed upon printed and graphic matter accompanying said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed booklets entitled "What You Can Do About Relieving the Agonies of Arthritis", which said booklets were shipped by said defendant to said Rosenberg's Original Health Food Store, via common carrier, from Chicago, State of Illinois, to San Francisco, State of California, prior to the date of shipment of said drug, as aforesaid, to wit, on or about September 5, 1944, were, among other things, the statements relating to said drug appearing in the booklets of the same title more fully described in the fourth count of this information, which said statements in said booklets in said fourth count set forth, are, by reference, hereby incorporated in this count;

That said drug, when introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress [21 U.S.C. 352 (a)], in that the aforesaid statements in said booklets in said fourth count set forth, are, as aforesaid, were false and misleading in this, that the said statements represented and suggested and created in the mind of the reader the impression that said drug, when taken alone or in combination with other drugs mentioned in said booklets, to wit, "Lelord Kordel's Fenugreek Tea", "Fero-B-Plex", "Bolax", "Cetabs", and "Minerals Plus", or with the diets recommended in said booklets, would be effective in the cure, mitigation, treatment and prevention of arthritis, whereas, in truth and in fact, said drug when taken alone or in combination with said other drugs mentioned in said booklets, or with the diets recommended

137 in said booklets, would not be effective in the cure, mitigation, treatment and prevention of arthritis;

All of which was and is contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

J. Albert Woll

United States Attorney for the
Northern District of Illinois

138 U. S. vs. Lelord Kordel, trading as Lelord Kordel
Products and Nutrition Enterprises.

F. D. C. No. 17777

Sample Nos. 28363-4-5-6-7-8-9-H

28370-1-3-5-6-H, 29408-H.

City of Washington }
District of Columbia } ss:

Before me, Anselma M. Stein, an employee of the Federal Security Agency, Food and Drug Administration, designated by the Federal Security Administrator, under authority of the Act of January 31, 1925, c. 124, sec. 1, 43 Stat. 803, and Reorganization Plan No. IV, secs. 12-15, effective June 30, 1940, to administer or take oaths, affirmations and affidavits, personally appeared LAWRENCE E. PUTNAM, in the City and District aforesaid, who, being first duly sworn, deposes and says: That he graduated from Harvard Medical School (1934) with M.D. degree; interned at Peter Bent Brigham Hospital (1935-1936); interned at Beth Israel Hospital (1936-1938); First Lieutenant, Medical Reserve, United States Army (1938-1939); Associate Medical Officer, Veterans Administration (1939-1941); Medical Officer in the Food and Drug Administration since January 2, 1941.

I have examined the report of analysis of a product labeled in part "Cetabs ***", made by Harold F. O'Keefe, which showed said product to contain approximately 30 milligrams of vitamin C per tablet.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective to insure strong teeth, healthy gums, good digestion, clear complexion, vigorous health, and said drug would not be effective to prevent and correct premature old age, liver troubles, stiff joints, hormone deficiency and malfunction, diabetes, poor complexion, fatigue, heart trouble, colds, high blood pressure, pyorrhea, loss of weight, tooth decay, retarded growth and poor appetite.

I have examined the report of analysis of a product labeled in part "Ormotabs ***", made by Harold F. O'Keefe, which showed said product to be a sugar-coated tablet consisting essentially of plant material, including sassafras, chlorophyll, and an iodine-bearing substance.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment of anemias, internal infections, peritonitis, brain ulcer, osteomyelitis, ulcerated varicose veins, respiratory infections, arteriosclerosis, cardiac hypertension or other heart ailments, nervous fatigue, tubercular infection, and undernourishment in children, and said drug would not be effective to promote hormone production, and it would not provide substances possessing hormone activity.

Affiant further states that the substances composing this product, as shown by the foregoing analysis, are not nutritional factors and are not of dietary importance.

I have examined the report of analysis of a product labeled in part "Ribotabs ***", made by Harold F. O'Keefe, which showed that the article is a compressed tablet containing riboflavin.

139 Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment of blindness, high blood pressure, ulcer, loss of weight, oily skin, falling hair, digestive disturbances and poor complexion.

I have examined the report of analysis of a product labeled in part "Fero-B-Plex ***", made by Harold F. O'Keefe, which showed that the article is a compressed tablet containing vitamin B-1, Riboflavin, and compounds of calcium, phosphorous, and iron.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective to correct lack of vitality, poor appetite, indigestion, constipation, nervousness, and irritability and said drug, when taken alone or in combination with other drugs to wit, "Lelord Kordel's Fenugreek Tea", "Le-Lord Kordel's Sarsaparilla Tea", "Cetabs", "Bolax" and "Minerals Plus", or with the diets recommended, would not be effective in the cure, mitigation, treatment and prevention of arthritis.

I have examined the report of analysis of a product labeled in part "Minerals Plus ***", made by Harold F. O'Keefe, which showed that the article is a tablet consisting essentially of a mineral mixture containing chlorophyll, vitamin D, and small amounts of calcium, phosphorous, and iron.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be of nutritional significance by reason of the presence therein of the minerals to wit: Manganese, cobalt, sodium, sulphur, potassium, chlorine, magnesium, zinc, nickel, lithium, boron, strontium, silicon and bismuth.

Affiant further states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment and prevention of poor memory, ulceration, bad teeth, general weakness, impaired respiration, fatigue, obesity, liver disorders, stiff joints, nervous breakdown, tonsilitis, rheumatic conditions, impaired glandular function, constipation, and abnormal body cell growth and said drug when taken alone or in combination with said other drugs, namely, "Lelord Kordel's Fenugreek Tea", "Fero-B-Plex", "Lelord Kordel's Sarsaparilla Tea", "Cetabs", and "Bolax", or with the diets recommended, would not be effective in the cure, mitigation, treatment and prevention of arthritis.

I have examined the report of analysis of a product labeled in part "Bolax ***", made by Harold F. O'Keefe, which showed that the article consists essentially of powdered plant material including laxative plant drugs such as senna and buckthorn.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug, when taken alone or in combination with other drugs, namely, "Lelord Kordel's Fenugreek Tea", "Fero-B-Plex", "Lelord Kordel's Sarsaparilla Tea", "Cetabs", and "Minerals Plus", or with the diets recommended, would not be effective in the cure, mitigation, treatment and prevention of arthritis, and said drug would not be effective in the treatment of acidosis, colds, lack of appetite, and constipation but would be of value only in the temporary relief of constipation.

140 I have examined the report of analysis of a product labeled in part "Kordel Tablets***", "A Non-Specific Food Adjunct***", made by Harold F. O'Keefe, which showed that the article consists essentially of sodium-citrate, plant material, and oil of wintergreen.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug

was not a food adjunct and it would provide no ingredients of nutritional significance.

Affiant further states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment of arthritis, rheumatism, sciatica, neuralgia, lumbago, and aching joints and muscles.

I have examined the report of analysis of the product designated in the records of this Agency as 28370-H, and labeled in part "Everm Wheat Germ Oil Capsules***", made by Harold F. O'Keefe, which showed that the article is a gelatin capsule containing an oil, like wheat germ oil.

Affiant states that there are no definite disease conditions in man recognized as due to vitamin E deficiency in which said drug would be an effective treatment.

Affiant further states that composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment and prevention of heart failure, paralysis, muscular diseases, mental disorders, impotency, reproductive disorders, and infertility.

I have examined the report of analysis of a product labeled in part "Kordel-A***", made by Harold F. O'Keefe, which showed that the article is a gelatin capsule containing a vitamin-A-bearing oil.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the cure, mitigation, treatment and prevention of failing eyesight, red and swollen eyelids, squinting of eyes, color blindness, acne and other skin disorders, and defective eyes in infants are not frequently due to inadequate intake of vitamin A by the mothers.

I have examined the report of analysis of a product labeled in part "Fenugreek Tea***", made by Harold F. O'Keefe, which showed that the article consists essentially of fenugreek seeds.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment of stomach upsets, sour taste in mouth, gas pains, heartburn, hyperacidity, belching, bloating, liver disorders, rheumatic and neuritic pains, debility, ulcers, colitis, internal inflammations and acidosis, and said drug, when taken alone or in

combination with "Lelord Kordel's Sarsaparilla Tea", "Fero-B-Plex", "Bolax", "Cetabs", and "Minerals Plus", or with the diets recommended, would not be effective in the cure, mitigation, treatment and prevention of arthritis.

I have examined the report of analysis of a product labeled in part "Garlic Plus***", made by Harold F. O'Keefe, which showed that the article consists essentially of dried plant material, including garlic.

141. Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment of high blood pressure, headaches, dizziness, shortness of breath, heart pains, sleeplessness, and inability to concentrate.

I have examined the report of analysis of the product designated in the records of this Agency as 28376-H, and labeled in part "Niamin***", made by Harold F. O'Keefe, which showed that the article is a coated tablet containing 10 milligrams of niacin amide and a small amount of yeast.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug would not be effective in the treatment of heart ailments, angina pectoris, cerebral thrombosis, headaches, dizziness, ringing in the ears, deafness, allergies, high blood pressure, nervousness, poor appetite, irritability, kidney disorders, and fatigue.

I have examined the report of analysis of the product designated in the records of this Agency at 29408-H, and labeled in part "Sarsaparilla Tea ***", made by Harold F. O'Keefe, which showed that the article consists essentially of a mixture of sarsaparilla root and sassafras bark.

Affiant states that the composition of the product as shown by the foregoing analysis is such that said drug when taken alone or in combination with "Lelord Kordel's Fenu-greek Tea", "Fero-B-Plex", "Bolax", "Cetabs", and "Minerals Plus", or with the diets recommended, would not be effective in the cure, mitigation, treatment and prevention of arthritis.

Affiant further states that his opinion represents the consensus of present-day reliable medical opinion.

Lawrence E. Putnam, M. D.,
Medical Officer, U. S. Federal Security Agency

Subscribed and sworn to before me at Washington, D. C.,
this 29th day of November, 1945.

Anselma M. Stein

Employee of the Federal Security Agency,
designated under Act of January 31, 1925, and
Reorganization Plan IV effective June 30, 1940.

142 U. S. vs. Lelord Kordel trading as Lelord Kordel
~~Products~~, and Nutrition Enterprises.

F.D.C. No. 17777.

Sample Nos.: 28363-4-5-6-7-8-9-H

28370-1-3-5-6-H

29408-H

State of Illinois }
County of Cook } ss:
City of Chicago }

Before me, Elsie S. Burke, an employee of the Federal Security Agency, Food and Drug Administration, designated by the Federal Security Administrator, under authority of the Act of January 31, 1925, c.124, Sec. 1, 43 Stat. 803, and Reorganization Plan No. IV, Secs. 12-15, effective June 30, 1940, to administer or take oaths, affirmations, and affidavits, personally appeared Malcolm R. Stephens, in the city, county, and state, aforesaid, who being first duly sworn, deposes and says: I am an employee of the United States Government and am Chief of the Chicago Station of the Food and Drug Administration of the Federal Security Agency, which Agency is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act; that records on file in the said Food and Drug Administration, identified, respectively, as 28363-H, 28364-H, 28365-H, 28366-H, 28367-H, 28368-H, 28369-H, 28370-H, 28371-H, 28373-H, 28375-H, and 28376-H, and which I have examined, show that on or about March 22, 1945, a duly authorized inspector of the Food and Drug Administration, collected from a dealer located at Seattle, Washington, the following samples:

- (28363-H) A sample of a drug product labeled in part, as follows: (on box) "Cetabs ***", (circular) headed: "VITAMINS For the Whole Family";
- (28364-H) A sample of a drug product labeled in part, as follows: (on box) "Ormotabs ***", (circular)

lar) headed: "NEW HERB-FLAVORED SALT";

(28365-H) A sample of a drug product labeled in part, as follows: (on box) "Ribotabs ***", (circular) headed: "VITAMINS For the Whole Family";

(28366-H) A sample of a product labeled in part, as follows: (on box) "Improved Formula Fero-B-Plex ***", (circular) headed: "VITAMINS For the Whole Family";

(28367-H) A sample of a product labeled in part, as follows: (on box) "Minerals plus Chlorophyll & Vitamin D ***", (circular) headed: "New! Fenutabs Fenugreek Tablets";

(28368-H) A sample of a drug product labeled in part, as follows: (on box) "Bolax ***";

(28369-H) A sample of a product labeled in part, as follows: (on box) KORDEL TABLETS (Improved Formula) ***", (circular) "How To Make Your Wartime Cooking Easier";

(28370-H) A sample of a product labeled, in part, as follows: (on box) "Everm Wheat Germ Oil Capsules ***", (circular) headed: "VITAMINS For the Whole Family";

(28371-H) A sample of a product labeled, in part, as follows: (on box) "Kordel-A ***";

(28373-N) A sample of a drug product labeled, in part, as follows: (on 4 oz. box and on 1-lb. box) "Fenugreek tea ***", (three circulars: headed, respectively, "New! Fenutabs Fenugreek Tablets" "VITAMINS For the Whole Family", and "Save Money";

(28375-H) A sample of a drug product labeled, in part, as follows: (on box) "Lelord Kordel's GARLIC-PLUS ***";

(28376-H) A sample of a product labeled in part, as follows: (on box) "Niamin ***", (circular) headed: "VITAMINS For the Whole Family";

That at the time of such collections, the dealer in possession of the goods sampled signed, or there were signed on its behalf by someone who knew the facts, statements evidencing that the samples so collected consisted of goods shipped to the said dealer by Lelord Kordel Products, Chi-

cago, Illinois, and at the same time there was delivered to the said inspector documentary evidence of such transportation of said goods;

That records on file in the said Food and Drug Administration, identified as 29408-H, and which I have examined, show that on or about February 28, 1945, a duly authorized inspector of the Food and Drug Administration, collected from a dealer located at San Francisco, California, a sample of a drug product labeled, in part, as follows: (on box) "Le-lord Kordel's Sarsaparilla tea ***", (circular) headed: "How To Make Your Wartime Cooking Easier";

That at the time of such collection, the dealer in possession of the goods sampled signed, or there was signed on its behalf by someone who knew the facts, a statement evidencing that the sample, so collected, consisted of goods shipped to the said dealer by Nutrition Enterprises, Chicago, Illinois, and at the same time there was delivered to the said inspector documentary evidence of such transportation of said goods.

I made careful examination of each of said samples abovementioned, and found:

(in the case of 28363-H—Cetabs)

That the article contained approximately 30 milligrams of vitamin C per tablet.

(in the case of 28364-H—Ormotabs)

That the article is a sugar-coated tablet consisting essentially of plant material, including sassafras, chlorophyll, and an iodine-bearing substance.

(28365-H—Ribotabs)

That the article is a compressed tablet containing riboflavin.

(28366-H—Fero-B-Plex)

That the article is a compressed tablet containing vitamin B-1, Riboflavin, and compounds of calcium, phosphorous, and iron.

(28367-H—Minerals Plus)

That the article is a tablet consisting essentially of a mineral mixture containing chlorophyll, vitamin D, and small amounts of calcium, phosphorous, and iron.

(28368-H—Bolax)

That the article consists essentially of powdered plant

material including laxative plant drugs such as senna and buckthorn.

(28369-H—Kordel Tablets)

That the article consists essentially of sodium citrate, plant material, and oil of wintergreen.

(28370-H—Everm Wheat Germ Oil)

143a That the article is a gelatin capsule containing an oil, like wheat germ oil.

(28371-H—Kordel-A)

That the article is a gelatin capsule containing a vitamin-A-bearing oil.

(28373-H—Fenugreek Tea)

That the article consists essentially of fenugreek seeds.

(28375-H—Garlic Plus)

That the article consists essentially of dried plant material, including garlic.

(28376-H—Niamin)

That the article is a coated tablet containing 10 milligrams of niacin amide and a small amount of yeast.

(29408-H—Sarsaparilla Tea)

That the article consists essentially of a mixture of sarsaparilla root and sassafras bark.

Malcolm R. Stephens

Chief, Chicago Station,

Food and Drug Administration,
Federal Security Agency

Subscribed and sworn to before me, at Chicago, Illinois,
this 4th day of August, 1945.

Elsie S. Burke

Employee of the Federal Security Agency,
designated under the Act of January 31,
1925, and Reorganization Plan IV, effective
June 30, 1940.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

* * (Caption—No. 46 CR 1) * *

United States of America vs. Lelord Kordel, trading as
Lelord Kordel Products and Nutrition Enterprises.

Criminal Information. Vio: Section 331(a), Title 21, United States Code. (Introduction and delivery for introduction into interstate commerce of drugs, which were misbranded.)

J. Albert Woll, United States Attorney.

Filed Jan. 7, 1946, at 10:00 o'clock. Roy H. Johnson,
Clerk.

146 And on the same day, to wit, on the 7th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Elwyn R. Shaw District Judge, appears the following entry, to wit:

147

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, January 7, 1946

Present: Honorable Elwyn R. Shaw, District Judge.

• • (Caption—No. 46 CR 1) • •

On motion of the United States Attorney

It is ordered that leave be and is hereby given to file Criminal Information against Lelord Kordel, trading as Lelord Kordel Products, and Nutrition Enterprises, the defendant herein and

It is further ordered that a bench warrant issue for the defendant and that the bond of the defendant be and the same is hereby fixed at the sum of Five Hundred Dollars (\$500.00)

148 And afterwards, to wit, on the 8th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Elwyn R. Shaw District Judge, appears the following entry, to wit:

149

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Tuesday, January 8, 1946

Present: Honorable Elwyn R. Shaw, District Judge.

• • (Caption—No. 46 CR 1). • •

On motion of the United States Attorney

It is ordered that the above entitled cause be referred to the Executive Committee of this Court for re-assignment.

150 And on the same day, to wit, on the 8th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes and Elwyn R. Shaw, Executive Committee, District Judges, appears the following entry, to wit:

DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

151

• • (Caption—No. 46 CR 1). • •

It is ordered that the above entitled cause be, and the same is hereby re-assigned to Judge LaBuy.

Barnes
Shaw

Executive Committee

Jan. 8, 1946
Chicago

152 And afterwards, to wit, on the 14th day of January, 1946, being one of the days of the regular December, 1945 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

153

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, January 14, 1946

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 46 CR 1) • •

On motion of the defendant

It is ordered that this cause be and the same is hereby re-set for arraignment and plea to February 14, A.D. 1946.

154 And afterwards, to wit, on the 14th day of February, 1946, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

155

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Thursday, February 14, 1946

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 46 CR 1) • •

This day comes the United States by the United States Attorney, come also the defendants Lelord Kordel trading as Lelord Kordel Products in his own proper person and by his counsel and Nutrition Enterprises by its counsel, and the defendants being arraigned upon the Criminal

Information filed herein against them plead not guilty thereto and

It is ordered that this cause be and the same is hereby set for trial on March 18, A. D. 1946.

156 And afterwards, to wit, on the 18th day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

157

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, March 18, 1946

Present: Honorable Walter J. LaBuy, District Judge.

* * (Caption—No. 46 CR 1) * *

On motion of the United States by the United States Attorney

It is ordered that this cause be and the same is hereby consolidated with causes numbered 45 CR 490 and 45 CR 488 for trial the consolidated causes to proceed under the title of United States of America vs. Laura Kordel, an individual trading as Gotu Kola Distributors and Lelord Kordel, Lelord Kordel trading as Lelord Kordel Products, Lelord Kordel trading as Lelord Kordel Products and Nutrition Enterprises, numbered 45 CR 488, consolidated cause.

158 And on the same day, to wit, on the 18th day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Elwyn R. Shaw, District Judge, appears the following entry, to wit:

159

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Monday, March 18, 1946

Present: Honorable Elwyn R. Shaw, District Judge.

• • (Caption—No. 45 CR 488) • •

This day comes the United States by the United States Attorney, come also the defendants Laura Kordel, an individual trading as Gotu Kola Distributors and Lelord Kordel, Lelord Kordel trading as Lelord Kordel Products and Lelord Kordel trading as Lelord Kordel Products and Nutrition Enterprises, each in his own proper person and by counsel and being advised by the Court as to their right to a trial by jury waive that right, counsel for the defendants and for the Government consenting, and the Court acquiescing, and thereupon this cause is submitted to the Court for trial without a jury and during the examination of witnesses on behalf of the Government the hour of adjournment having arrived

It is ordered that this cause be and the same is hereby continued to March 19, A. D. 1946.

160 And afterwards, to wit, on the 19th day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Elwyn R. Shaw, District Judge, appears the following entry to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Tuesday, March 19, 1946

Present: Honorable Elwyn R. Shaw, District Judge.

• • (Caption—No. 45 CR 488 Consolidated) • •

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney, come also the defendants each in his own proper person and by counsel, and trial of this cause proceeds and during the further examination of witnesses on behalf of the Government the hour of adjournment having arrived

It is ordered that this cause be and the same is hereby continued to March 20, A. D. 1946 at 10:00 o'clock A. M.

162 And afterwards, to wit, on the 20th day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

163

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Wednesday, March 20, 1946

Present: Honorable Walter J. LaBuy, District Judge.

• • (Caption—No. 45 CR 488 Consolidated) • •

This being the day to which this cause was continued for further trial, again comes the United States by the United States Attorney, come also the defendants each in

his own proper person and by his counsel, and trial of this cause proceeds and during the further examination of witnesses on behalf of the Government the hour of adjournment having arrived

It is ordered that this cause be and the same is hereby continued to March 21, A. D. 1946 at 10:00 o'clock A. M.

164 And afterwards, to wit, on the 21st day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

165

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Thursday, March 21, 1946

Present: Honorable Walter J. LaBuy, District Judge.

• • Caption—No. 45 CR 488 Consolidated) • •

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney, come also the defendants each in his own proper person and by counsel, and trial of this cause proceeds; further evidence is heard on behalf of the Government, the Government rests and the hour of adjournment having arrived

It is ordered that this cause be and the same is hereby continued to March 22, A. D. 1946.

166 And on the same day, to wit, the 27th day of June, 1946 there was filed in the Clerk's office of said Court a certain Transcript of Proceedings, in Causes Nos. 45 CR 488, 45 CR 490 and 46 CR 1 in words and figures following, to wit:

168) Transcript of Proceedings before Honorable Walter J. LaBuy, Judge.

March 18-1946 to March 22, 1946.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America

vs.

Laura Kordel, an individual, trading as Gotu Kola Distributors and
Lelord Kordel, &

Defendants.

No. 45 CR 488

United States of America

vs.

Lelord Kordel, trading as
Lelord Kordel Products,

Defendant.

No. 45 CR 490

Consolidated
Causes

United States of America

vs.

Lelord Kordel, trading as
Lelord Kordel Products and Nutrition Enterprises,

Defendant.

No. 46 CR 1

Transcript of proceedings had and evidence taken in the above-entitled causes before the Honorable Walter J. LaBuy, one of the judges of said court, in his court room in the United States Court House, at Chicago, Illinois, commencing on the 18th day of March, A. D. 1946, at 10 o'clock a. m.

170 Present: Mr. J. Albert Woll, United States Attorney, by Mr. Robert C. Eardley, Assistant United States Attorney, appeared for the United States of America; Mr. James W. Breen, appeared for the defendants.

The Clerk: 45 CR 488, 45 CR 490 and 46 CR 1, United States vs. Laura Kordel, etc., and Lelord Kordel.

And motion that the above causes be consolidated.

169

Mr. Breen: No objection to that motion.

The Court: Are the parties both ready for trial?

Mr. Eardley: The government is ready.

Mr. Breen: Defendants ready.

The Court: Is this a jury case?

Mr. Breen: No, your Honor, I think we will waive the jury.

The Court: It is a criminal matter?

Mr. Breen: Yes.

The Court: Let the record show trial by jury waived. Proceed, please.

Mr. Eardley: May it please the Court, counsel and I have just about reached an agreement on a stipulation in regard to the interstate shipments of this product. The stipulation is being prepared formally, we will have it probably within a day or so, so I understand it is agreeable between ourselves that there will be no dispute over the interstate feature of the shipment of the products and circulars, or the product.

Mr. Breen: That is correct.

The Court: That is only as to the interstate commerce aspect of the case?

Mr. Eardley: That is right, Judge.

Mr. Breen: If your Honor please, there are two defendants, husband and wife. If it is agreeable to the Court, the wife would like to be excused from attending the trial, if it can be done under the law and the rules.

The Court: This is a criminal case, isn't it?

Mr. Eardley: That is right.

Mr. Breen: That is right.

The Court: She should be present. I know of no rule permitting the absence of the defendant in a criminal case.

Mr. Breen: She would like to be excused, your Honor, and with your Honor's permission it could be done in this Court.

172 The Court: I doubt it, Counsel. I know of no authority for that.

Mr. Breen: In the state court it could not.

The Court: If you know of any authority on that point, I would be glad to see it. I know of none.

Let's see, where are the defendants?

Mr. Breen: These are the two defendants.

The Court: All right. Let's see, there are three cases, Counsel?

Mr. Eardley: That is right, Judge; they have been consolidated.

The Court: And the charge is what?

Mr. Eardley: The introduction and delivery for introduction into interstate commerce of a drug which was then and there misbranded.

The Court: Yes. All right. Proceed.

Opening Statement.

In Behalf of United States of America

Mr. Eardley: May it please the Court and opposing counsel:

The defendants Kordel here are charged in three separate informations which have been consolidated, and they are charged with the violation of Section 331(a) Title 21,

United States Code, with the introduction and delivery 173 for introduction into interstate commerce of a drug which was misbranded.

Now, very briefly, I would like to tell the Court the history of the Federal Food, Drug and Cosmetics Act. That Act was originally passed in 1906. At that time Congress saw fit to inaugurate a law that would protect the public against misbranding foods and also any misrepresentations or any adulterated food put in the products.

That law remained in force and effect until 1912. Congress then thought there were certain loopholes that the defendants could avoid in a prosecution, so in 1912 an amendment was passed to this law. That amendment remained in full force and effect until 1938.

During the particular time that the 1912 law was in force and effect it was found that the defendants could avoid prosecution if they would ship their merchandise separate and apart from the products. So prior to 1938 Congress had certain committee meetings at which they called in various men to find out how this law could be so remedied so that a person could be charged if they sent their literature and products separate and apart. At that particular time the law was amended and it is still in force and effect whereby a person who sends their literature

174 and product separate and apart may be charged with violation under this particular section.

Now, these defendants have sent various products to various people throughout the United States. We have witnesses here from Seattle, also from San Francisco and from Cincinnati, to show that they did receive these products and how they were received.

Now, in their literature they make certain charges, they say these drugs will do certain things. We will present to this Court the very best medical testimony to show that these charges are false and fraudulent and that they are perpetrating a fraud on the public.

We will present that the persons receiving this false literature that accompanied these products may prejudice themselves by not receiving competent medical attention in the right time, and that relying on certain statements that have been made here they may cause themselves serious injuries, as I said, by the simple reason they avoid going to a doctor and receiving competent care when they have an ailment and they should go immediately to a doctor and receive a diagnosis.

These doctors who will be brought before this Court, as I say, are the highest men that we could possibly reach, and they will take each one of these products, part by 175 part, and show the Court where the misrepresentations are fraudulent.

Incidentally, your Honor, on these particular charges the Courts have held and the law is so written that fraud does not have to be proven—or intent does not have to be proven in these particular cases.

Thank you, Judge.

Opening Statement on Behalf of Defendants

Mr. Breen: May it please the Court, I think this is the first one or the first criminal action that has been brought under this statute. I have not been able to find any decision in a criminal case. However, I won't say there is none but I have not been able to find it. Actions have been brought under the civil provisions of this Act, and I think the government is relying on the decisions in the civil cases as precedents in this case.

Our contention and our defense will be that we have

never misbranded an article, and the documentary evidence that the government will offer, I think, will disclose that persons are urged in those very documents or circulars to consult their physicians.

176 The statute; later on, I will contend, your Honor, this provision is unconstitutional. It attempts to declare as a fact what is not a fact. In other words, it pretends to decide that black is white and red is blue. We will contend later on that no one of these statutes is binding on the court; that it is a question of fact that the defendants under the Constitution have a constitutional right to engage in any lawful occupation; and they have the further constitutional right to advertise their products and business; and that Congress has attempted to deprive them of that right by the use of any advertisement or any circular or part of the label although that label clearly appears upon the merchandise.

The Court: May I inquire of the District Attorney whether this is the first criminal prosecution under this Act?

Mr. Eardley: No, Judge. There have been many of them and they have gone up to the Supreme Court. If the Court would be interested, I will be glad to show you the decision.

The Court: Well, not at this time. At this time I would like to hear the evidence.

177 Thereupon the United States of America, to maintain the issues on its behalf, introduced the following evidence, to-wit:

JAMES S. SHEETS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. Will you state your name? A. J. E. Sheets.

The Court: You will have to talk louder. I cannot hear you. What is your full name?

The Witness: James Sheets.

The Court: James what? Spell the last name.

The Witness: S-h-e-e-t-s.

The Court: Your address?

The Witness: Seattle, Washington.

The Court: What is your address?

The Witness: 1918 Third Avenue.

The Court: 1918 Third Avenue, Seattle, Washington?

The Witness: That is right.

The Court: Proceed.

178 By Mr. Eardley:

Q. What is your business or occupation? A. I am a merchant in the health food business.

Q. How long have you been so employed and working in that capacity? A. Thirteen years, approximately.

Q. Where is your store located? A. 1918 Third Avenue, and 1313 Third Avenue; I have two stores.

Q. What sort of products do you sell in your store? A. Dietary food products.

Q. Do you sell any Lelord Kordel products? A. I do.

Q. How long have you been selling these products?

A. Oh, I should say a matter of four or five years.

Q. Calling your attention now to February 1st and February 5, 1944, did you sell Lelord Kordel products at that particular time? A. Yes, I did.

Q. What products did you sell at that particular time?

A. Well, a number of items. Would you want the names of them or part of them?

The Court: This is in February of what year?

Mr. Eardley: February 1st and February 5, 1944.
Judge.

179 The Court: What was the last question?

(Question and answer read.)

By Mr. Eardley:

Q. Did you sell Cetabs? A. Yes.

Q. Did you sell Sarsaparilla Root?

Mr. Breen: I object to the form of the question, leading.

The Court: Were there a great number of items, Counsel?

Mr. Eardley: Yes, there were, Judge.

The Court: All involved here?

Mr. Eardley: Yes, they are.

The Court: All of them?

Mr. Eardley: All of these we are asking about.

The Court: This witness should answer the first question you asked, namely, what products did you purchase from the defendant? Name them all.

The Witness: I could repeat—

Mr. Breen: I object to any reference to any document.

The Court: First of all, exhaust your memory. Name a number of the items you sold.

The Witness: Fero-B-Plex.

The Court: Speak a little more distinctly and louder.

180 The Witness: Fero-B-Plex.

The Court: ~~Speak~~ that.

The Witness: ~~Fero-B-Plex~~.

The Court: Spell all of those.

The Witness: Bolax. Minerals-Plus. Kordel A. Sarsaparilla Tea. Fenugreek Tea.

The Court: Any others you remember?

The Witness: I do not recall any right now.

By Mr. Eardley:

Q. Have you exhausted your recollection now?

A. Yes.

Have you a notebook—

The Court: What is your answer? Don't shake your head. A. Yes.

By Mr. Eardley:

Q. Have you a notebook memorandum that you might refresh your memory at this particular time? A. I have an invoice.

The Court: You may refer to it.

The Witness: Herb-Mix. Kordel Tablets.

By Mr. Eardley:

Q. Mr. Sheets, when were these products shipped to you that you just mentioned?

Mr. Breen: I object to his referring to any memorandum before he has exhausted his memory.

By Mr. Eardley:

Q. Do you know at this time?

The Court: First of all, do you remember without referring to any memorandum?

The Witness: In January, 1944, January 17th.

By Mr. Eardley:

Q. Were any other products shipped to you after that date by this particular company? A. Yes, we have received other shipments.

Q. Now, did anything else come in that shipment at that particular time?

Mr. Breen: I object to his reference to a memorandum unless he cannot remember.

The Court: Do you remember?

The Witness: I believe there were some booklets, some books.

By Mr. Eardley:

Q. What were the names of the books?

Mr. Breen: I move to strike the answer out.

The Court: Overruled.

Mr. Breen: He said he believes.

By Mr. Eardley:

Q. Do you know whether there were booklets sent?
182 A. Yes.

Q. What were the names of these booklets?
A. Correcting Constipation.

Mr. Breen: Will you keep your voice up?

The Court: We cannot hear you at all. You can talk louder than that.

The Witness: Correcting Constipation.

By Mr. Eardley:

Q. What other booklets? A. There was a booklet on something about arthritis.

Q. Would it be "What you can do about relieving the agonies of arthritis"? A. As I recall, that was the title.

Q. When was the Bolax shipped? A. This was shipped in 1942.

Q. Do you recall what date? A. I would have to refer to the invoice of that date.

Q. Do you have that invoice with you at this particular time? A. I believe I do.

Q. You have no independent memory at this particular time? A. No.

Mr. Eardley: I ask that the witness be allowed to
183 refer to it.

The Court: You may refer to it.

The Witness: July 15, 1942 apparently was about the date.

By Mr. Eardley:

Q. Do you know when you received the shipment of Fero-B-Plex and when it was shipped? A. Shipped January 21, 1944.

Q. How large a store do you have out there, Mr. Sheets?
A. You are referring to 1918 on Third Avenue?

Q. Yes. A. The storeroom there is about 15 by 20, the retail part of it.

Q. Where did you display the Kordel products in your store? A. Usually on the north section of the store, the north wall.

Q. Are they open or closed shelves? A. They are open shelves.

Q. Where did you display the circulars or booklets?

A. We have a wire rack where we display the booklets for sale.

Q. Do those include the booklets you just spoke about?

A. Yes.

184 Q. How far distant are the booklets from the products you spoke about? A. Approximately 10 feet.

Q. Do you know Mr. Cooley? A. Yes, I do.

Q. Did you see him on or about February 1, 1944 in your store? A. Yes, I did.

Q. Did you have a conversation with him at that time?

A. He —

Mr. Breen: I object to any conversation.

The Court: Well, without stating the conversation, he may state whether or not he did have a conversation. Did you have a conversation with him, yes or no?

The Witness: Yes, I did.

The Court: That is all.

By Mr. Eardley:

Q. When Mr. Cooley came to your store, what did he do? A. He took samples of merchandise.

Q. What merchandise did he take samples of?

A. Samples of merchandise from Belord Kordel.

Q. Do you recall what these samples were at that particular time? A. Well, Bolax, and a number of 185 others. I would not know all of them.

Q. Did he take samples from the shipment you just spoke about? A. Yes.

Q. And samples of the booklet? A. That is right.

Q. Were the booklets included in the cartons when you received them in your shipments?

Mr. Breen: I object to the form of the question.

The Court: Overruled.

Read the question.

(Question read.)

The Court: By carton you mean the merchandise which was received?

Mr. Eardley: That is right.

The Witness: Yes, they were in one shipment, in one of the cartons.

By Mr. Eardley:

Q. What drugs were shipped on January 18th?

Mr. Breen: What year?

Mr. Bradley: Pardon me, 1944, in which the booklets were included?

The Witness: I would have to refer to the invoice to answer that.

186 By Mr. Eardley:

Q. You have no independent memory now?

A. No.

The Court: You may refer to it.

The Witness: There were Herb-Mix, Sarsaparilla Tea, Kordel Tablets, Minerals-Plus, Cetabs, Kordel A, Fenugreek Tea; and Correcting Constipation booklet, and a booklet relating to arthritis. That is all.

Mr. Eardley: Will you mark this Government's Exhibit 1 for identification.

(Said document was marked Government Exhibit 1, for identification.)

By Mr. Eardley:

Q. I show you Government's Exhibit 1 and ask you if this is the booklet you just referred to? A. It appears to be, yes, sir.

The Court: Well, is it?

The Witness: Yes.

By Mr. Eardley:

Q. When you would sell a Kordel product, would you also include these booklets after a sale was made? A. No.

Q. Not the one I just referred to. You referred to "Health Today," did you not; the book, "Health Today" 187 day"? A. No, I did not. I referred—

Q. I am not referring to that book, Mr. Sheets.

Mr. Breen: I object to cross examining his own witness, your Honor.

Mr. Eardley: I am sorry, I will withdraw the question.

By Mr. Eardley:

Q. Did you receive a booklet known as "Health Today, Spring 1945"? A. We would only receive that through the mail, a single copy.

Mr. Eardley: You may cross examine.

Cross Examination by Mr. Breen.

Q. This book you have referred to, isn't it a fact that was to be sold at a price of 25 or 50 cents?

Mr. Eardley: I object, immaterial.

The Court: Overruled. He may answer.

A. That is correct, that is only sold, that book.

The Court: Which book are you referring to?

Mr. Breen: Arthritis, the book on arthritis.

Q. This book is marked down here in the right-hand corner, "Price 25 cents"? A. Yes.

188 Q. Is that the price you sold it for? A. That is correct.

Q. You did not give this away to anyone that came in to buy medicine in your store or any of the Kordel products?

Mr. Eardley: I object, immaterial.

The Court: Overruled.

A. We did not give that away at any time.

By Mr. Breen:

Q. You did not, I see. Did a customer of yours, in order to buy Kordel merchandise, have to buy one of these books? A. No.

Q. He could buy the medicine independent of the books, couldn't he? A. That is correct.

Mr. Breen: That is all.

Re-Direct Examination by Mr. Eardley.

Q. Mr. Sheets, do you know whether a customer would know what use to put, say, Fenugreek Tea to without the use of the booklet?

Mr. Breen: I object to that.

189 The Court: The question is, would a customer know?

Mr. Eardley: Yes.

The Court: Sustained.

By Mr. Eardley:

Q. Would you personally know, Mr. Sheets—

Mr. Breen: I object.

The Court: Go ahead and complete your question.

By Mr. Eardley:

Q. —what use to put this product to without the help of this book?

Mr. Breen: I object to that.

The Court: He may answer.

A. Yes, I believe I would.

By Mr. Eardley:

Q. For what diseases? A. I would have access to botanical information and other stuff.

Q. But you would have to go to botanical information, if you just bought the product itself, is that correct?

A. I would have to go to reliable sources.

Mr. Eardley: No more redirect.

The Court: Anything further?

Mr. Breen: No more cross.

The Court: You are excused.

190 Mr. Breen: One minute, Mr. Sheets, please.

Re-Cross Examination by Mr. Breen.

Q. Isn't it a fact that a customer who patronized health food stores would read magazines?

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

Mr. Breen: That is all.

(Witness excused.)

CHARLES C. COOLEY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name? A. My name is Charles C. Cooley.

Q. What is your address? A. Box 1291, Yakima, Washington.

Q. What is your business or occupation? A. I am an inspector with the Food and Drug Administration, Federal Security Agency.

Q. What are your duties as an inspector with the 191 Food and Drug Administration? A. Carrying on investigation pursuant to the enforcement of the Act, Federal Food, Drug and Cosmetics Act; collecting samples; making investigations of various kinds.

Q. Calling your attention now to February 1, 1944, were you employed in that department at that particular time? A. I was.

Q. Were your duties as you just stated at that particular time? A. They were.

Q. Again referring to February 1, 1944, where were you stationed at that time? A. In Seattle, Washington.

Q. In the course of your duties, did you have occasion to see Mr. Sheets on or about February 1, 1944? A. Yes, I did.

Q. Also on February 5, 1944? A. Yes, I did.

Q. Where did you see Mr. Sheets on those particular days? A. I saw him in his place of business.

Q. What was the purpose of your seeing Mr. Sheets 192 on those days? A. I was engaged in the investigation of books and other products sold, actually sold in health food stores.

Q. When you went to Mr. Sheets' store, what did you do there on that particular date? A. I first took an inventory of his merchandise of certain kinds in which I was interested from the standpoint of an enforcement officer. Then I proceeded to collect samples from the merchandise shipped by Lelord Kordel of Chicago.

Q. What merchandise did you collect on those particular days? A. - I collected samples of—if your Honor please, may I refer to a list?

Mr. Breen: I object.

The Court: If you have exhausted your memory.

The Witness: I will try from memory. Cetabs. Ferro-B-Plex. Minerals-Plus. Bolax. I am afraid I will have to do that.

The Court: Have you exhausted your memory now?

The Witness: Right.

The Court: You may refer to the memorandum.

The Witness: Fenugreek Tea and Sarsaparilla Tea.

By Mr. Eardley:

-193 Q. What did you do after you secured these samples?

A. After I secured the samples, I also took as samples copies of the pamphlet, "What to do about arthritis."

I then secured records covering the interstate transaction between Mr. Sheets and the shipper, Lelord Kordel. I made copies of these records.

I took the records. I paid Mr. Sheets for the samples by government voucher and I took the samples to my office in the Federal Building, identified each package that I had collected with my initials, and the date, and the government sample number.

I then sealed the samples with the official government seals, as well as my name and the date, and the official government number which I assigned to those samples.

I then wrapped up the samples and placed them in a carton and delivered them to the United States mail for shipment to Chicago to the Chicago Station, Food and Drug Administration.

Q. I will show you Government's Exhibit 1 and ask you if you have ever seen this before? A. I have,

Q. Does it contain any identifying mark? A. It does.

194 What is that mark? A. It contains my initials, the date, the government sample number which I assigned to it.

Mr. Eardley: Will you mark this Government's Exhibit 2; for identification.

(Said document was marked Government Exhibit 2, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 2, and ask you if you have ever seen this before. A. Yes, sir, I have. This is identified similarly to the pamphlet.

Q. What marks of identification does that contain? A. This contains my initials, the date and the government sample number.

Q. What is that particular government exhibit? A. It is a package which bears on it a label "Minerals-Plus," amongst other things.

Mr. Eardley: Will you mark this Government Exhibit 3?

(Said document was marked Government Exhibit 3, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 3, for
195 identification,— A. That is a package with my initials, the date, and the government sample number and a label, "Lelord Kordel's Sarsaparilla Root."

Q. Where did you obtain Government's Exhibit 1, 2 and 3? A. Government's Exhibits 1, 2 and 3, let's see, Government's Exhibit 1 is a pamphlet and was displayed in the wire rack immediately adjacent to the cash register on the counter in Mr. Sheet's store.

Government's Exhibit 2 and 3 are from the stock which

was on the shelf in Mr. Sheets' store. The shelf was, I should say, 6 or 7 feet from the pamphlet rack.

Mr. Eardley: Will you mark these Government's Exhibits 4 and 4A.

(Said documents were marked Government's Exhibit 4 and 4A, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibits 4 and 4A, and ask you if you have ever seen those before? A. Yes. This is apparently an outside labeling of a carton of a product called Cetabs. It bears my initials, the date, 196 and the government sample number.

Q. I will ask you, is that the outside labeling of a carton? A. I would judge that it is.

Q. Well, do you know?

Mr. Breen: Will you keep your voice up, please?

The Witness: I say, I would judge that it is. I believe so.

By Mr. Eardley:

Q. Now, I call your attention to Government's Exhibit 4; are there any marks of identification on there? A. There are.

Q. Whose marks are those that are placed there, if you know? A. Well, there is my own seal which I placed on the package at the time I was sealing it. It bears my written signature and the date and the government sample number, also another identification, the name of the product and the government sample number.

On this end it bears a seal signed by one William F. Kunke with also the Federal Food and Drug Administration seal, and the date and the government sample number.

Q. When you wrapped and sealed that, what did it include? A. It included a box of Cetabs.

Mr. Eardley: Will you mark these Government's Exhibits 5 and 6, for identification?

(Said documents were marked Government's Exhibits 5 and 6, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 5 for identification, and ask you if you have ever seen that before? A. I have.

Q. Where did you obtain that? A. I obtained that in Mr. Sheets' store from the shelf stock referred to. That

bears the identification similar to the other government exhibits, my initials, the date, the government sample number, and the label "Fenugreek Tea."

Q. I will show you Government's Exhibit 6 and ask you if you have ever seen that before? A. Yes, sir. That is a carton bearing my identification, my initials, the date, the sample number and labeled in part "Fero-B-Plex."

Mr. Eardley: Will you mark these Government Exhibits 7 and 7A?

198 (Said documents were marked Government's Exhibits 7 and 7A, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 7 and ask you if you have ever seen that before? A. Yes. That is the outside of a box which formerly contained a product labeled "Bolax." It bears my initials, the date, the government sample number that I gave it to identify it.

Q. Where did you obtain this carton? A. I obtained this from Mr. Sheets' shelf stock.

Q. I will show you Government's Exhibit 7A and ask you if you have ever seen that before? A. That is the package in which I shipped the box which contained this exhibit. It is so identified by my seal.

Mr. Eardley: As soon as counsel has examined those, I would like to offer them in evidence.

The Court: Are you through with the witness otherwise?

Mr. Eardley: What is that, Judge?

The Court: Are you through with the witness?

Mr. Eardley: No, I have a few more questions.

The Court: Suppose you proceed with the witness then?

By Mr. Eardley:

199 Q. What was the physical layout of that store there? A. Would you like to have me make a diagram for you?

Mr. Breen: Will you keep your voice up?

The Witness: Would you like to have me make a diagram for you?

Mr. Eardley: It is entirely up to the Court.

The Court: So far as the Court is concerned, he doesn't need to make a diagram.

The Witness: All right.

The Court: What are the dimensions of the store?

The Witness: Roughly, 20 by 15, or thereabouts, a little bit longer.

The Court: Twenty feet long by 15?

The Witness: A little bit longer than it is wide.

The Court: Glass around the entrance?

The Witness: Glass around the entrance.

The Court: And the walls contained shelving?

The Witness: The walls contained shelving.

The Court: And merchandise is displayed?

The Witness: Merchandise is displayed?

The Court: How about the rear of the store; shelving there?

The Witness: There are shelves for the reserve stock in the rear of the store, not available to the public.

200 The Court: Showcases?

The Witness: Yes, there is a showcase in the store.

The Court: A cash register?

The Witness: A cash register.

The Court: A counter?

The Witness: A counter for pamphlets.

The Court: A wire rack containing pamphlets?

The Witness: That is right, Sir.

The Court: Anything else?

The Witness: Oh, I think they have a bar for dispensing vegetable juices of some kind or another.

The Court: Proceed with the next question.

Mr. Eardley: You may cross examine.

Cross Examination by Mr. Breen.

Q. Did I understand you to say the rack where these booklets were, the wire rack, was seven or eight feet from where the capsules were sold, the vitamins? A. Well, the counter at which the attendant presides is, oh, 2 or 3 feet wide and a half dozen feet long; and I am facing the rear of the store, at the left hand of that counter is the cash register. Directly next to that, at the time I sampled
201 the products each day in giving the order, was this wire rack. My recollection is that I could easily, by taking probably one or two steps, one step, have reached up and got the merchandise from the side shelf.

Q. And this rack where these periodicals were had a lot of periodicals, did it not? A. It had a number of pamphlets.

Q. A number of others? A. That is correct.

Q. Did you get one of these books on arthritis? A. I took three of the books.

Q. Did you pay for them? A. I did.

Q. How much? A. Twenty-five cents in government voucher.

Q. You paid for the three you took; they were not given to you by anybody free, were they? A. They were not.

Mr. Breen: That is all.

Mr. Eardley: No more questions.

(Witness excused.)

202 HARRY C. HOUSE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name? A. Harry C. House.

Q. What is your address? A. 1518 Second Avenue, Seattle, Washington.

Q. What is your business or occupation? A. I conduct a retail food store.

Q. Where? A. At 1518 Second Avenue, Seattle.

Q. How long have you been in this business? A. Well, I have been in this location about six years.

Q. What is the size of your store? A. It is approximately about 20 by 60.

Q. Do you carry Lelord Kordel's products? A. I do.

Q. What products do you carry of Lelord Kordel? A. Oh, Fenugreek Tea, Cetabs, Bolax, Garlic-Plus, Papaya-Plus, Ribotabs, Fero-B-Plex, and various others.

Q. Do you know Inspector McKinley? A. I do.

203 Q. Calling your attention now to March 22, 1945, did Inspector McKinley have occasion to visit your store? A. Yes, he did.

Q. What was the purpose of his calling, if you know? A. He said he wanted to take an inventory or look at the Lelord Kordel products.

Q. Where did you have the Lelord Kordel products on that particular day? A. We had them on a shelf on the north side of our store opposite the cash register.

Q. What if any literature did you have of Lelord Kordel at that particular time?

Mr. Breen: I object.

The Court: Overruled.

A. Well, we had these various booklets that were sold for 25 cents.

By Mr. Eardley:

Q. Will you name those booklets? A. I think I would have to refer to these notes.

Q. Have you exhausted your memory? A. There was a book on relaxation, and on arthritis, and a nutrition guide.

Q. Any others? A. There was a magazine; I do not recall whether we had it at that particular date or not.

Q. Have you exhausted your memory now? A. I think I have.

Q. Have you notes to refresh your memory?

The Court: Answer instead of shaking your head.

The Witness: Yes.

The Court: You may refer to the notes.

By Mr. Eardley:

Q. Have you referred to your notes? A. Yes.

Q. Now, can you state whether there were any other booklets? A. What particular date was that?

Q. On or about March 22, 1945. A. Yes. We had this booklet "Health Today" at that time.

Q. Were there any other pamphlets or placards there at that particular time? A. I think there was a placard there advertising Fenugreek Tea.

Q. What was that placard; what did it say on that? A. I don't remember the wording.

Q. Do you know whether it had on top of it "Stomach agonies"? A. I believe it did.

Q. These books that you just testified to that you had in your store, when were they shipped? A. Well, we got them at various dates from October of '44 to February, January and February, '45.

Q. When these drugs were shipped, did they also include pamphlets and circulars you just testified to? A. Well, these 25-cent booklets came with the merchandise. The magazine "Health Today" was shipped separately.

Q. Will you name the one you just referred to there? A. "Health Today."

Q. And the booklet that came with it? A. That is

called "Nutrition Guide." Another one is called "Arthritis," and the Course in Relaxation.

Q. Did Mr. McKinley take samples from the products that you just referred to? A. What was that?

Q. Did Mr. McKinley take various samples of the Kordel products? A. Yes, he did.

Q. Of all of the products? A. Perhaps not all that I mentioned. He did not sample the entire line. He took just certain items.

206 Q. Do you recall what samples he took at that particular time? A. Garlic-Plus, Niamin, and Health Soap. Papaya Foot Oil. Thi-ro-dex. Fenutabs. Valeria Tablets. Kordel Tablets. Fenugreek Tea. Fero-B-Plex. Cetabs. Papaya-Plus. Ribotabs. Daily A. Minerals-Plus. Bolax. Herb-Sal. And Herb-Mix. Kordel A. Ormotabs.

And then the three booklets, Course in Relaxation, Nutrition Guide and Arthritis.

Q. Did you mention Everm? A. Yes, there is Everm and also Brothtabs.

Q. Mr. House, did all these samples that you just mentioned come with this shipment you just testified to? A. They came in various shipments over this period of time from October to January and February.

Q. Of what years? A. Of '44 and '45.

Q. Did Mr. McKinley take samples from these shipments? A. Yes, he did.

Mr. Eardley: Will you mark these Government's Exhibits 8, 8A, 8B and 8C?

(Said documents were marked Government's Exhibits 8, 8A, 8B and 8C, for identification.)

207 By Mr. Eardley:

Q. I will show you Government's Exhibits 8, 8A, 8B and 8C, and ask you if you have ever seen them before? A. Yes, I have.

Q. Does it contain any identification mark? A. Yes, it bears my initials and the date.

Q. You are referring to Government's Exhibit 8, is that right? A. Yes.

Q. And where was this obtained? A. From a room on the floor of our store.

Q. Where the general public could secure copies of it? A. Well, it is possible we had some on the counter.

Q. Referring again to Government's Exhibit 8, did you on occasion wrap this Health Today, spring of 1945, with various merchandise you sold? A. Yes, it is possible.

Q. Will you refer to Government's Exhibit 8A. I ask you if you have seen that before? A. Yes.

Q. Does it contain any identification mark of yours? A. It has my initials and the date.

Q. Where was that obtained, if you know? A. From our store.

208 Q. You have Government's Exhibit 8B. I ask you if you have ever seen that before? A. Yes.

Q. Does it contain any identification marks? A. My initials and the date.

Q. Where was that obtained? A. From our store.

Q. Now, referring to Government's Exhibit 8C, I ask you if you have ever seen that before? A. Yes.

Q. Does it contain any identification marks of yours? A. My initials and the date.

Q. Where was Government's Exhibit 8C obtained? A. That was obtained from our store.

Mr. Eardley: Will you mark this Government's Exhibit 9, for identification?

(Said document was marked Government's Exhibit 9, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 9 and ask you if you have ever seen that before? A. Yes.

209 Q. What is that? A. Well, it is a photograph of a sign advertising Fenugreek Tea.

Q. Where was that sign? A. Well, I think we had it in our window.

Q. Do you know whether you did or not? A. Well, I am quite certain we did.

Q. Does that picture contain any identification marks of yours? A. It has my initials and the date.

Q. Mr. House, what is in front of that sign here? A. Well, there is a fac simile of Fenugreek Tea, a small size package.

Q. Is that the placard that you just testified was shipped to you by Lelord Kordel? A. Yes.

Mr. Eardley: You may cross examine.

Mr. Breen: I move, your Honor, to strike all the

answers in regard to the exhibition and sale of the periodicals, for his answer was, "It is possible."

The Court: I don't recall what the answer was. You will have to refer to any such where he said it was possible.

Mr. Breen: There are three or four of them, your Honor. The witness' answer was, "It was possible."

210 The reporter will read it.

The Court: His qualification was, it is possible?

Mr. Breen: That is right.

The Court: Let the reporter refer back to that. I think it is a good plan, Counsel, to make your objection at that time.

Mr. Breen: I thought he was going to connect it up.

The Court: Because I do not recall it right now.

(Previous record read as follows:

"Q. And where was this obtained?

"A. From a room on the floor of our store.

"Q. Where the general public could secure copies of it?

"A. Well, it is possible we had some on the counter.")

The Court: Referring to that answer he just read—

The Witness: Yes, I did.

The Court: Did you have these pamphlets in your store? Did you?

The Witness: Yes, sir.

The Court: Where were they in your store?

The Witness: Well, we had a little room built in there where we do mailing, and they were in bundles, in the store.

211 The Court: Is that the only place you kept them, in that room?

The Witness: We have a further space upstairs, we had a mezzanine floor, and we have further space in there.

The Court: Where were they kept on the mezzanine floor?

The Witness: Not accessible to the public.

The Court: Were any of these pamphlets on display so far as observation of them, so far as the public was concerned?

The Witness: As a rule we put those on the counter where the customers may pick them up, or where they may be handed to a customer.

The Court: Well, were any of them left on the counters, you said, as a general rule?

The Witness: I cannot say definitely. We had them originally for mailing through the mail.

The Court: Did you mail some of them out?

The Witness: We mailed some of them, yes.

The Court: Well, the objection is sustained.

Cross Examination by Mr. Breen.

Q. This periodical "Health Today," isn't it a fact 212 that they were sent to you for the purpose of mailing to the customers?

Mr. Eardley: I object.

A. Yes, sir.

Mr. Eardley: I object to what the purpose is.

The Court: Sustained.

Mr. Eardley: I ask the answer be stricken.

By Mr. Breen:

Q. What was this periodical sent to you for? A. For the purpose of further—

Mr. Eardley: I object, immaterial.

The Court: I think the question is, what was done with them by him rather than the purpose.

By Mr. Breen:

Q. What was done with them by you when you received them? A. We mailed the greater part of them.

The Court: That is, you mailed them to your customers?

The Witness: That is right.

By Mr. Breen:

Q. I will ask you to look at this document and state whether or not that writing appearing in the lower right-hand corner appearing on that printed matter, appeared on each one of the periodicals of that kind that you 213 received? A. Yes, sir, it did.

Q. Isn't it against the government rules and regulations to sell articles with that on?

Mr. Eardley: I object.

By Mr. Breen:

Q. Or give it away?

The Court: Sustained. The court will recess for five minutes.

(Recess.)

The Court: Proceed.

By Mr. Breen:

Q. I ask you to look at these periodicals that have been identified.

The Court: Does the record show what they are? Have you identified them for the record?

By Mr. Breen:

Q. The exhibit marked for identification 8C, exhibit marked for identification 8A, and the exhibit marked for identification 8B. You received each one of those, did you?

A. Yes, sir.

Q. What did you do with them after you received them?

A. We had them for sale in our store.

214 Mr. Eardley: I object to the answer, not responsive.

The Court: Overruled.

By Mr. Breen:

Q. Did you sell any of them? A. Yes, we did.

Q. Did you mail others out to the people? A. Not unless they paid for them.

Q. If they paid for them, you would mail them out?

A. Yes.

Mr. Eardley: I object, immaterial.

By Mr. Breen:

Q. You would not give these away at any time, would you? A. No, we would not.

Mr. Eardley: I object to that, still immaterial.

The Court: Overruled.

By Mr. Breen:

Q. I ask you to look at Exhibit 8, for identification; that was received by you? A. Yes, it was.

Q. What was done with that after you received it? A. We addressed a number of them for mailing; in fact, we did mail some of them and we had others on hand in preparation for mailing at the time they were seized.

215 Who seized them? A. The United States Food & Drug Administration.

Q. If these had not been seized, you would have mailed them all out, would you?

Mr. Eardley: I object to that.

The Court: Sustained.

By Mr. Breen:

Q. I will ask you to look at this document, marked Defendant's Exhibit 1, for identification.

(Said document was marked Defendants' Exhibit 1, for identification.)

Will you look at this document and state whether or not it bears your signature? A. Yes, it does.

Q. Why did you put your signature on that document?

Mr. Eardley: I object to why he put his signature on the document.

The Court: He may answer. How did you happen to put your signature on it?

By Mr. Breen:

Q. Read it carefully. A. Well, it looks like a carbon copy. Apparently there was—the original bore some reason for signing it.

Q. What does that say for your signature? What does that say? A. It doesn't say anything. It is just a carbon copy of my signature.

The Court: Did Inspector McKinley ask you to initial or sign it when he picked it up?

Mr. Eardley: I believe, Judge, this is something different. It is a Defendants' Exhibit, it is not a government exhibit.

The Court: Oh, I see. That is not a government exhibit.

By Mr. Breen:

Q. Is this a duplicate of the receipt the inspector gave you at the time he took some of this stuff out?

A. Yes, it looks like it. I would say it was.

Q. Where it says, "Publication Health Today, Spring, 1945, 800 addressed," what does that mean?

A. It means that we had approximately 800 addressed for mailing.

Q. Did the inspector take those 800; does it mean that?

A. They were eventually seized and destroyed.

Q. Who seized them?

Mr. Eardley: I object to that unless the witness knows.

217 By Mr. Breen:

Q. Do you know who seized them?

A. The U. S. Marshal took them away on his orders.

Q. Have you seen them since?

A. I beg your pardon?

Q. Have you seen them since?

A. No, I have not.

Q. And those 800 were addressed. If they had not been seized, would you have mailed them out?

A. Yes.

Mr. Breen: That is all.

Re-direct Examination.

By Mr. Eardley:

Mr. Eardley: Will you mark this Government's Exhibit 10, for identification?

(Whereupon said document was marked Government's Exhibit 10, for identification.)

Q. I show you Government's Exhibit 10, for identification, and ask you if you have ever seen that before?

A. Yes, I have.

Q. Will you turn it over on the back and examine it?

A. Yes.

218 Q. Why is that postal insignia cancelled out on that?

The Court: Why is what?

Mr. Eardley: The postal insignia over the stamp there.

Mr. Breen: I did not hear your question.

Mr. Eardley: Why is the postal insignia stamped out on that particular exhibit?

Mr. Breen: I object to that.

By Mr. Eardley:

Q. If you know?

The Court: I do not know what the materiality of that is.

Mr. Breen: I cannot say.

The Court: How is it material?

Mr. Eardley: It will be shown that this particular exhibit was picked up on the counter, and there is a law that says that unless it is stamped out it cannot be distributed.

The Court: It cannot be distributed?

Mr. Eardley: It cannot be distributed, it is a violation.

The Court: He may answer.

The Witness: Yes, that bears our stamp. We affixed that rubber stamp over this printed mailing franchise here for the purpose of handing them out over the counter.

219 Mr. Eardley: That is all.

Re-cross Examination.

By Mr. Breen:

Q. Were you told by Mr. Kordel to stamp that out and give them out over the counter?

Mr. Eardley: I object, immaterial.

A. No.

The Court: Sustained. Any further questions?

Mr. Eardley: No more on redirect.

Mr. Breen: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Eardley: At this time I will offer all the exhibits that have been identified.

The Court: Any objection?

Mr. Eardley: Counsel says there is no objection.

The Court: They are all admitted.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 1 to 10, inclusive.)

220 FRANK McKINLEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name?

A. Frank McKinley.

Q. What is your address?

A. 215 Federal Office Building, Butte, Montana.

A. What is your business or occupation?

A. Food & Drug inspector.

Q. What are your duties as a food and drug inspector?

A. I visit various food and drug and cosmetic establishments to make surveys, take surveillance samples and to make factory inspections.

Q. Calling your attention now to March 22, 1945, were you so employed in that capacity on that particular date?

A. I was.

Q. Did you have occasion to visit the Western Natural Foods Co., Seattle, Washington, on that particular day?

A. I did.

Q. Who did you see when you went there?

A. Mr. H. C. House.

Q. What was the purpose of your call?
221 A. I went to check the products of Lelord Kordel and the accompanying literature.

Q. Did you obtain any products there at that particular time?

A. I did.

Q. What products did you obtain at that particular date?

A. Cetabs, Ormotabs, Garlic-Plus, Fenugreek Tea, Minerals-Plus, Thi-ro-dex, Ribotabs, Niamin, Bolax, Everm, Kordel A, Kordel Tablets.

Is that 12?

Q. Did you mention Thi-ro-dex?

A. I think I did. I may have omitted it.

Q. What, if anything else, did you obtain on that particular visit?

A. I obtained some Nutrition Guides, and a booklet about relieving the agonies of arthritis, and a booklet on the art of relaxation, "20 Lessons in the Art of Relaxation." And I got some of what is called a health publication, "Health Today by Lelord Kordel."

Q. Where was this literature when you obtained it?

A. There was a balcony in the store and Mr. House took me up there and I found 14 bundles in the original condition with the postal indicia unaltered, and there were about 290 Health Today in each bundle.

222 Mr. Breen: Keep your voice up, please.

The Witness: O. K.

And then I found 70 on what we call a health bar, or a juice bar, which is next to a little office which is used for mailing. On this juice bar, in three piles I found 70 of Health Today.

By Mr. Eardley:

Q. Let me interrupt. What do you mean by juice bar?

A. There is a bar about the middle of the north wall of the store. It is about 4 feet long by 6 feet at the north corner of the L-shape, and one is probably, the short end of the L is on the north side, and the long end of the L is east and west. At the north end of the L there was a pile of Health Today. And in the middle of the L, Health Today, and at the right hand side or the east end of the L was another pile of Health Today. On these the postal

indicia had been cancelled by the Western Natural Foods rubber stamp.

Also right opposite that about 15 feet were Kordel products on the north wall, and another pile of Health Today on the wrapping counter and these were identical with the ones on the juice bar. They were about 4 or 5 feet from the cash register on another counter precisely south of 223 the Kordel products on the north wall.

Q. Were any of these products displayed in the store?

A. Mr. House has a private office which is located in the sales room of the store. The sales room of the store is about 20 feet by 50 feet long, and the office must be about 15 by 9, and that is close to the south wall of the office or the north wall of the retail store, about 4 by 9 feet from the partition to the back wall which is on the east, and there is located three or four shelves in plain view of patrons of the store. There reposed the Kordel products on display.

Q. I will show you Government's Exhibit 10 and ask you if you have ever seen that before?

A. This is one of about five of the Health Today spring of 1945, edited by Lelord Kordel, which I picked up from the juice bar of the Western Natural Foods Company on March 22, 1945.

Q. I will show you Government's Exhibit 9 and ask you if you have ever seen that before?

A. I have seen this several times and it was impossible to make a tracing of this very readily, so I made a photograph and developed it myself and brought a copy to Mr. House and had him identify it in order to show that he had that in the window. It was on the north window of 224 the arcade of the Western Natural Foods Company at 1518 Second Avenue, Seattle.

Q. Did you keep a copy of that placard, the text of the placard?

A. I also copied it but it is very difficult to show the stomach and kidney illustration here, so I thought a photograph would be more conclusive than what I wrote.

Q. Did you copy the text at any time?

A. I did.

Mr. Eardley: Will you mark this Government's Exhibit 11, for identification?

(Said document was marked Government's Exhibit 11, for identification.)

By Mr. Eardley: •

Q. I will show you Government's Exhibit 11 and ask you if you have ever seen that before?

A. I have. That is the copy I made of this placard and I checked it against the wording of the photograph.

Q. Is that the text of stomach and kidney?

A. That is correct. This is the text of the 2½ foot by 3¼ foot, approximately, placard in the north window of the Western Natural Foods Company.

Q. Did you take samples of the various products that you just mentioned?

225 A. I took samples of each of those products which I previously mentioned, and also the literature.

Q. What did you do with these samples after you had taken them?

A. I took the samples to the Food & Drug Administration office in Seattle; put the official sample numbers on them, with the date of March 22, 1945, and my initials. Then I wrapped them, that is, each individual sample of any one product, in paper, and I affixed the official government seals with the sample number, the date and my full name. Immediately after doing that I put them in a fibre case and addressed it to the Food & Drug Administration Laboratory in Chicago; and I took the package to the Railway Express Agency upon completion.

• Mr. Eardley: Will you mark this Government's Exhibit 12, for identification?

(Said document was marked Government's Exhibit 12, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 12 and ask you if you have ever seen that before?

A. This is a package which I identified and collected at the Western Natural Foods Company on March 22, 1945.

Q. Does that have any marks of identification that you 226 can identify it by?

A. It has the sample number, the date and my initials.

Mr. Eardley: Will you mark these Government's Exhibits 13 and 13A for identification?

(Said documents were marked Government's Exhibits 13 and 13A, for identification.)

By Mr. Eardley: Q. I will show you Government's Exhibits 13 and 13A, and ask you if you have ever seen those before?

A. These are packages of Ormotabs which I collected at the Western Natural Foods Company on March 22, 1945 and which I identified at the time; and this is the official seal which I put on the package.

Mr. Eardley: Will you mark this Government's Exhibit 14, for identification?

(Said document was marked Government's Exhibit 14, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 14 and ask you if you have ever seen that before?

A. This is the original sealed box of Ribotabs which I obtained at the Western Natural Foods Company on 227 March 22, 1945, and which I identified with the sample number, date, and my initials.

Mr. Eardley: Judge, we have a number of these and the testimony will be the same as to all of these products. We might save the time of the Court and some time also for counsel because the testimony identifying them will be the same.

Mr. Breen: I was just going to suggest we will consent to admitting these vitamins. I want to object to Government's Exhibits 10 and 11, that they are not binding where this witness says he made a picture that he has of something, and I think we are entitled to the original.

The Court: What about counsel's suggestion of avoiding repetition?

Mr. Breen: I say, we will admit this, no objection.

The Court: Will you stipulate that they are the same as those previously introduced?

Mr. Eardley: They are new products, Judge.

The Court: Oh.

Mr. Eardley: And the testimony will be the same. They contain the identifying marks of the inspector.

The Court: (You mean with reference to identifying them?)

Mr. Breen: Yes.

The Court: You stipulate?

228 Mr. Breen: Yes, as to the Kordel products, we will stipulate.

The Court: Very well. The Court will recess now until 2 o'clock.

Mr. Eardley: During the interim, Judge, I will have the reporter mark these for identification.

The Court: So you may save time.

(Whereupon certain documents were marked Government's Exhibits 15, 16, 17, 17A, 18, 18A, 19, 20, 21 21A, 22, 22A and 23, for identification.)

229 The Clerk: United States vs. Kordel, et al., on trial.

Mr. Eardley: Let the record show it will be stipulated by and between the parties hereto, by their respective attorneys, that the exhibits from 10 to 23, inclusive, will be admitted into evidence without objection.

Mr. Breen: That is the Kordel products, no documents of any kind.

Mr. Eardley: No, these exhibits are not offered at this particular time.

230 The Court: Very well; let the record so show.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 10, 11, 12, 13, 13A, 14, 15, 16, 17, 17A, 18, 18A, 19, 20, 21, 21A, 22, 22A and 23.)

Mr. Eardley: And that the testimony previously given by the inspector, Mr. McKinley, would be the same if he were shown the other exhibits that are admitted in evidence at this particular time.

Mr. Breen: That is right.

The Court: All right.

FRANK McKINLEY, called as a witness on behalf of the Government, having been previously sworn, resumed the stand and further testified as follows:

Direct Examination by Mr. Eardley (Continued).

Q. You were in court when Mr. House testified?

A. I was.

Q. You heard him testify that the samples that you had taken of these products were taken from a certain
231 shipment. Do you know what shipment they were

taken from, or from two shipments or several shipments?

A. Yes. They were taken from October in 1944 to February, 1945.

Q. Mr. McKinley, what is the juice bar that you referred to in the Western Natural Foods Company store?

A. Oh, that is an L-shape bar, as I described, with segments of 4 feet and 6 feet long, with chairs along there for people to sit and drink health juices or eat carrot juice or apple juice. Then the patrons of the store can readily walk over if they see anything that is on there, there is no obstruction in front of them, and I sat there and copied the records.

Q. Is that where you picked up Government's Exhibit 10 you identified?

A. I picked it up with the indicia marked out by the Western Natural Foods Company.

Q. I show you Government's Exhibit 10 and ask you if that is the exhibit you picked up?

A. That is right. There were about 38 on the north end, 11 on the center and about 21 on the east end of the juice bar, and there were 16 here on the wrapping counter.

Mr. Eardley: You may cross examine.

232

Cross Examination by Mr. Breen.

Q. Where were these pamphlets you were talking about with reference to the products, the vitamins?

A. Would you like me to draw—

Q. No; just tell me.

A. Just about 20 feet.

Q. Twenty feet away?

A. That is in the instance of the juice bar, and the others about 12 to 15 feet away from the wrapping counter.

Q. And this is the document that you say you picked up, is that right?

(Handing document to the witness).

A. That is one of them.

Q. That is one of them?

A. Yes, one of five.

Q. One of five. Were they all the same as this?

A. They all had the indicia cancelled.

Q. They all had this stamp taken off?

A. Yes, sir.

Mr. Breen: That is all.

(Witness excused.)

Mr. Eardley: Miss Banesch.

Mr. Breen: May it please the Court, I desire to enter
233 an objection to this exhibit, Exhibit 10. This morning

I called your Honor's attention, when I admitted these,
as to the periodicals I have some objections.

The Court: What is the objection?

Mr. Breen: This is not, there is no evidence that this
document as it appears here was sent by interstate com-
merce. The testimony is that this stamp was put on it by
somebody that received it from some other state. It is not
in condition to be admitted as interstate commerce matter.

The Court: Your stipulation which you entered into with
counsel this morning with reference to the interstate ques-
tion applied only to the product?

Mr. Breen: The product only.

The Court: Not to the pamphlets?

Mr. Breen: Not to the publications at all.

Mr. Eardley: I am sort of taken by surprise because we
have already drafted a formal stipulation and we are just
going over it again for the final draft. Now counsel says
he is not going to stipulate as to the shipment of this.

Mr. Breen: As to this particular document. I will admit
the documents were shipped but this is not one.

The Court: The Court will reserve its ruling on it
234 and counsel may consider whether or not they wish to
introduce further evidence on that question.

Mr. Breen: That is right.

Mr. Eardley: If that is the case, Judge, we will try to
get a telegram right out to the West Coast in order to prove
this particular document and other documents of the same
nature, to show that it was received out there.

Mr. Breen: No, your own witness, your witness testified
that he put that stamp on in his store.

The Court: Isn't the witness here that was here this
morning?

Mr. Eardley: Yes.

The Court: Recall him and question him on it. He
would know where he received it, wouldn't he?

Mr. Eardley: That is right, Judge.

The Court: That is all you have to prove.

Mr. Eardley: I thought it was the whole lot of circulars he was complaining about, Judge.—

Mr. Breen: What is that?

Mr. Eardley: I thought it was the whole group or lot in the shipment with Health Today.

Mr. Breen: No, I am not, just this particular one is all.

Mr. Eardley: All right.

Mr. Breen: So far as I know, no one of these with the stamp was mailed, your own witness testified, and I am
235 objecting.

MILDRED BANESCH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name?

A. Mildred Banesch.

The Court: You will have to talk louder.

A. Mildred Banesch.

By Mr. Eardley:

Q. What is your address?

A. Cincinnati, Ohio.

Q. What is your street address?

A. Route 12, Box 424, Taylor Road.

Mr. Breen: Would you keep your voice up, please? This room seems to be—

The Witness: Taylor Road.

By Mr. Eardley:

Q. What is your business or occupation?

A. Secretary and bookkeeper.

Q. For what particular company?

A. Parks-Phillips Health Foods Company.

236 Q. How long have you been employed in that capacity?

A. It will be ten years in June.

Q. Were you employed by that company on or about November 11, 1943?

A. I was.

Q. At that particular day do you recall whether you received a shipment of Kordel products at the store?

A. Yes, we did.

Q. What was that shipment you received on that particular date?

A. On November 28th?

Q. November 6th?

A. November 6th, we received Gotu Kola.

The Court: Q. What did you receive?

The Witness: Gotu Kola.

By Mr. Eardley:

Calling your attention to May 6, 1943, were you employed at the store at that particular time in the same capacity you just testified?

A. That is right.

Q. Did you receive a shipment of circulars on or about that date?

A. Yes.

Mr. Eardley: Will you mark this Government's Exhibit 24, for identification?

(Said document was marked Government's Exhibit 24, for identification.)

By Mr. Eardley:

Q. I will show you Government's Exhibit 24, and ask you if you have ever seen that before?

A. Yes, I have.

Q. Does it contain any identifying marks?

A. It has my initials and the date.

A. Where was this received from?

A. You mean what city?

Q. If you know, yes.

A. I do not recall what city; whether that was shipped from Chicago or not, I do not know.

Q. Have you any record with you to show where this shipment was received from?

A. I do not have the freight bill on that, but I think you have it.

Mr. Eardley: Will you mark this Government's Exhibit 25, for identification?

(Said document was marked Government's Exhibit 25, for identification.)

By Mr. Eardley:

238 Q. I will show you Government's Exhibit 25, and ask you if you have ever seen that before?

A. Yes, I have.

Q. Does it contain any identifying marks?

A. My initials and the date.

Q. What date does it contain?

A. November 30, 1943.

Q. Who did you give this exhibit to at that particular time?

A. Well, I did not give it to him but Mr. Weissenberg took the samples and I signed it.

Q. Did he pay for those samples?

A. Not immediately.

Q. It was paid for?

A. Yes.

Q. By government voucher?

A. That is right.

Q. And at the same time you gave him the copy of Government's Exhibit 24, is that correct?

A. He took the copies of that exhibit at that time.

Q. Where did you have Exhibit 24 at that particular time?

A. We had them in the back room of the store and 239 they were under the table in cartons, and there may have been a few on top of that particular working table.

Mr. Breen: I move to strike out the answer "may."

The Court: Sustained. Tell us what you know of your own knowledge and not what may have been.

By Mr. Eardley:

Q. Do you know where some of the others were on this date?

A. To my knowledge the only ones that I can remember at that time were underneath the table in those cartons.

Q. What is the size of the store that you are speaking about now?

A. Well, there is a little offset in there and the store itself is about 16 feet wide and about 24 feet long, and then there is a partition and a doorway, and the other part of the building then is about 8 feet wide and about 20 feet long.

Q. Where this particular exhibit was placed in your store is open to the public, is it not?

A. They are not supposed to go back there but we do have this telephone back there and we have some stock—we had some stock at the time back there but they are not supposed to go there.

Q. Didn't you have the merchandise for sale that
240 was stored back there in racks at that particular time?

A. Yes, we did.

Q. Was Gotu Kola there at that particular time?

A. Yes, it was.

Q. And that was one of the products you had for sale,
was it not, in your store?

A. Yes.

Q. Did this circular come from the shipment that you
just referred to?

A. From that May, what was that date, May what?

Q. May 6th.

A. The 6th.

Q. 1943.

A. 1943.

Q. For the record, did you say "yes"? The reporter
cannot get a nod.

A. That circular came on May 6th, 1943. That was the
only shipment we received of that particular circular.

Q. And this package came from the November 6, 1943
shipment, is that correct?

A. That is right.

Mr. Eardley: You may cross examine.

241

Cross Examination by Mr. Breen.

Q. When did you say you received this circular?

A. That circular, the freight bill was marked May, was
it May 6, 1943 or—

Q. What came with it?

A. Nothing. That was all that came with that shipment
of that printed matter.

Q. That is all that came. How long after you received
this circular, if you know, did you receive the product re-
ferred to?

A. Well, that particular exhibit was not received until
November 6th.

Q. What year?

A. 1943.

Q. That is six months after you received this, is that
right?

A. That is right.

Q. Do you know whether or not you gave these away,
these circulars, in the store to customers?

A. To my knowledge, they were not given away.

Q. Do you know how the inspector came to secure the circulars?

A. I think Mr. Weissenberg was in twice and on his 242 second visit he got the circulars and they were in cartons under the table at that time.

Q. Is it not a fact that the general public could not get these circulars the way the inspector did?

A. Yes.

Q. Did you know he was an inspector before you allowed him to go in?

A. Yes.

Q. To where these were?

A. Yes.

Q. He told you and you let him in?

A. Yes.

Q. The customers are not treated that way, are they?

A. No.

Q. You were present when the inspector came in?

A. Yes, I was.

Q. What, if anything, did he say to you?

A. Well, really, the inspector first talked to my employer and then he talked to me later. I did not have a whole lot to say to Mr. Weissenberg except that I corroborated the fact that he had that sample and the circulars.

Q. What did he do with the circulars and the product; did he put them together?

243 A. Well, he took them along with him together.

Q. Did you mail the circulars to your customers—

A. Yes, we did.

Q. All of them?

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

Mr. Breen: I submit, your Honor, this is a criminal case and we have a right to show what she did with them. This is not a civil proceedings.

The Court: The question was whether or not she mailed these to her customers?

Mr. Breen: Yes.

The Court: I think she may answer that.

A. Yes, we did.

By Mr. Breen:

Q. You did. You mailed all of them?

A. Yes, I am sure we mailed all that we had.

Q. Do you know whether or not the inspector took these circulars at a time when the girls were addressing them?

A. That I don't know. The inspector came in one day when they were being addressed but it seems that he got those at another time.

Q. Do you know whether or not he saw the girls
244 addressing the circulars?

A. Yes, I am^o sure he did.

Mr. Breen: That is all.

Re-Direct Examination by Mr. Eardley.

Q. Miss Banesch, when Inspector Weissenberg came into the store, where did you say the government Exhibit 24 was at that particular time?

A. It was under the table, it was under the working table. We had an addressograph machine and these were in cartons under the table.

Q. Were there any other exhibits of the same kind above the table?

A. At one time when Mr. Weissenberg came in, there were some that were being addressed at the time he came in and, of course, they were on top of the table.

Q. How many packages of Government Exhibit No. 24 did you have in your building or office at that particular time, do you recall?

A. I do not know the exact amount. There were several cartons.

Q. And how many individual exhibits do you refer to by several cartons?

245 A. Oh, there were a lot of them in a carton.

Q. Do they run up into the thousands or tens of thousands?

Mr. Breen: I object to the form of the question, your Honor. She is his witness.

The Court: Overruled.

A. I would say they were in the thousands.

By Mr. Eardley:

Q. Are you sure now whether or not this is the only place in the store that Government Exhibit No. 24 was when Mr. Weissenberg came in and made that inspection?

A. Well, underneath the table and on the table to my knowledge is the only place that those particular circulars were. On a circular like that we never just leave them in

the store for customers to pick up, on a small circular like that.

Q. Could they have been in other parts of the store?

A. I doubt that very much on that particular circular. On small pieces like that, why, there was really not much point in putting those on the counter for customers to pick up.

Q. Have you exhausted your memory now?

A. I think I have.

Mr. Breen: On what?

246 Mr. Eardley: On the location of the circulars.

The Witness: Yes, I feel that I have.

By Mr. Eardley:

Q. Have you any notes to refresh your memory?

A. Not with me, no.

Mr. Eardley: The witness says she has exhausted her memory, and I ask her—

Mr. Breen: I object to that.

The Court: Sustained. You may ask her the direct question now.

By Mr. Eardley:

Q. Did you make a statement to Sidney Weissenberg on the 30th of October, 1943?

A. I did.

Q. At that time did you say to him that the bulk supply of circulars are kept in the main store located at 1542 Knowlton Street, Cincinnati, Ohio in two cartons and in many other places in the store?

A. That was Mr. Weissenberg's statement there. I know that I signed this, and I know that those cartons were kept in back there of the store.

Q. Did you read this statement at the time you signed it?

A. Yes, I did, but I did not attach much significance to it because I did not think it was too important.

247 Q. The statement is under oath, is it not?

Mr. Breen: I object to that, your Honor.

A. It may be.

The Court: Sustained.

Mr. Eardley: You may cross examine.

Mr. Breen: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Eardley: At this time I will offer Government's Exhibit 24 and 25.

Mr. Breen: I object to this on the ground irrelevant and immaterial.

The Court: Which is this?

Mr. Breen: This is Government's Exhibit 24.

The Court: Is that one of the pamphlets?

Mr. Breen: "An Amazing Message" is what it says.

The Court: Is it a pamphlet?

Mr. Breen: Yes, this here.

The Court: I think it is admissible. I overrule the objection. It is admitted.

(Whereupon said document so offered and received in evidence was marked Government's Exhibit 24.)

248 Mr. Breen: No objection to this.

(Said document, so offered and received in evidence, was marked Government's Exhibit 25.)

Mr. Breen: May it please the Court, at the adjournment I called your Honor's attention to the fact I would object to this Exhibit 5 where the government witness testified he made a picture of something. It was in the window—

The Court: A picture of a sign?

Mr. Breen: A sign that was in the picture. There was no evidence whatever that that sign went through interstate commerce in any way. This is not the original sign and I do not think a picture taken by the inspector is competent evidence.

Mr. Eardley: If your Honor please, may I answer that, that Mr. House, who is the operator, or, I should say, the manager of the store, testified that this particular sign had traveled in interstate commerce and that this was an identical picture of the sign that was in the window, and he also identified the Fenugreek Tea.

The Court: Did he testify he received that sign from—

Mr. Breen: That is the picture, not the sign, your Honor.

Mr. Eardley: He also testified that Government's 249 Exhibit No. 11 shows the contents of the sign as it appeared in the window and that has been identified by the inspector who took the picture, he copied its text apart.

The Court: I think that is admissible. Objection overruled, it is admitted.

Mr. Breen: We ought to have the original, your Honor. He says the original was not nearly as plain as this. He did for it the purpose of making things more clear. In other words, he is changing the original exhibit.

Mr. Eardley: He meant the original of the print, I believe, your Honor, not the picture.

Mr. Breen: The print.

The Court: All right, proceed.

SIDNEY WEISSENBERG, called as a witness on behalf of the United States, being first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name?

A. Sidney Weissenberg.

Q. What is your address?

A. 3602 Washington Avenue, Cincinnati, Ohio.

250 Q. What is your business or occupation?

A. I am an inspector with the United States Food & Drug Administration.

Q. What are your duties in that capacity?

A. I collect samples of foods, drugs and cosmetics; make investigations of those products, the manufacturers of those products, and anything dealing with adulteration and misbranding of those products.

Q. Calling your attention now to on or about November 30, 1943, were you so employed in that capacity you just testified?

A. I was.

Q. Did you have occasion on that particular date to go to the Parks-Phillips Food store in Cincinnati, Ohio?

A. I did.

Q. What was the purpose of your visit on that particular date?

A. The Chief Inspector of the Food & Drug Administration directed me to go to the Parks-Phillips Health Food Company for the purpose of collecting samples of Gotu Kola.

Q. When you went there, who did you see at this particular store?

251 A. The first person I saw at the store to speak to about the product Gotu Kola was the proprietor, Mr. Stanley M. Phillips, and I discussed the matter with him. The second person, after speaking to Mr. Phillips who had to leave, was Miss Mildred K. Banesch, who testified before me.

Q. Can you describe the size of the store?

A. This store at that time was approximately 16, the main portion of the store, you see, was approximately 16 feet wide and 25 feet long. Leading off from that section was another space that was approximately 20 feet long and about 8 feet wide. These spaces were interconnected by a space that was roughly 3 or possibly more feet wide.

Q. I will show you Government's Exhibit 24, for identification, and ask you if you have ever seen that before?

A. I have. This is a circular which was obtained from Miss Mildred K. Banesch on November 30, 1943 that is called "The Secret of Rejuvenation."

Q. Does that contain any marks of identification you identify that exhibit by?

A. It contains in addition to Miss Banesch's initials and date which were placed on there at the time I collected this sample, it contains a sample number 49028F, and the date 11/30/43, and my initials.

Q. Where did you obtain that government exhibit in relation to the store?

A. This exhibit was obtained along with others of similar nature from cartons beneath a working table in the second section which I described.

Q. Were there any loose exhibits similar to that one in and about the store?

A. Yes, sir.

Q. Where did you see them?

A. There were small numbers of the same exhibit, same circular "The Secret of Rejuvenation" on the working table in the same section where these cartons were located, and also in two other locations in the main portion of the store where other circulars and products were kept.

Q. Were those circulars available for picking up by the patrons and customers of that store?

A. Those circulars which were not in the cartons could have been picked up by any purchaser or customer who visited the store.

Q. Where was that circular in relation to the product Gotu Kola?

253 The circular or this exhibit, Sir?

Q. The circulars.

A. The circulars that I have mentioned before were, that is, those in the carton, were approximately 8 feet from

the product; those on the working table in the same section were approximately 12 feet from the product; and those in the main section were away from the product at least 20 feet or more.

Q. Was anybody else working at the working table when you made the selection of Government's Exhibit No. 24?

A. I am not certain about that. I believe there were some persons at those working tables. They usually mailed out various literature and products—

Mr. Breen: I object to what they usually do.

The Court: Sustained as to what they usually do.

By Mr. Eardley:

Q. What did you see them doing, if anything?

A. I saw them on my various occasions to visit this store, I saw them working in that same section, mailing these various pieces of literature and products.

Q. I will show you Government's Exhibit 25 and ask you if you have ever seen that before?

A. Yes, sir. This is a carton of Gotu Kola which was purchased from the Parks-Phillips Health Foods Company at Cincinnati from Miss Banesch.

Q. Does that contain any identifying marks?

A. It contains in addition to Miss Banesch's initials and date, a sample number given to the product 49028F and the date 11/30/43 and my initials.

Q. Where was Government's Exhibit 25 in relation to Government's Exhibit 24 in location in the store?

A. Well, 24 is the circular, Sir, and 25 is the product, is that correct?

Q. That is right.

A. The circulars were, as I described before, in cartons, that is, a number of cartons, approximately 8 feet from the product Gotu Kola. Those on the working table were approximately 12 feet from the product, and those in the main section of the store were 20 feet or more from the product, approximately.

Mr. Eardley: You may cross examine.

Cross Examination by Mr. Breen.

Q. You say you saw some circulars in various parts of the store, is that correct?

A. Yes, sir.

Q. Did you observe whether or not the mailing
255 permit had been stricken out on those you saw?

A. So far as I know, none of the mailing permits were stricken out.

Q. What can lawfully be done with circulars—

Mr. Eardley: I object, immaterial.

By Mr. Breen:

Q. —that are in the condition that you have described?

The Court: I sustain the objection.

Mr. Breen: That is all.

The Court: You are excused.

(Witness excused.)

DR. PAUL H. WOSIKA, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. Will you state your name, please?

A. Paul H. Wosika.

Q. Where do you live?

A. In Chicago, 5836 Glenwood.

A. Are you a licensed physician, licensed to practice medicine and surgery in the State of Illinois?

256 A. I am.

Q. Are you licensed to practice in any other state?

A. Massachusetts.

Q. Doctor, what if any education did you have to prepare yourself for your profession?

A. I have a Bachelor of Science degree; I have an M. D., and I have a Master of Science in Medicine, since 1936. I have a Doctor of Philosophy in Medicine, 1931.

Q. Where did you obtain the Bachelor of Science degree, from what institution?

A. Northwestern University.

Q. What date?

A. 1931.

Q. Where did you obtain your Doctor of Medicine degree?

A. From the Graduate School, Northwestern University.

Q. Where did you obtain your other degrees, Doctor?

A. From the Northwestern University. I interned at the Passavant Memorial Hospital for two years in medicine and surgery. I then accepted the post as Assistant Resident Physician in Boston at the Peter Brent Brigham Hospital and I spent three years at that institution qualifying myself for the American Board of Internal Medicine. The 257 American Board requires that a physician be out of school and have his M. D. five years and have had three years of training in his special field and at least five years since his graduation. This I accomplished by 1936 and I was awarded them and made a Diplomate of the American Board of Internal Medicine.

Q. Did you specialize in that field from that time up to the present date?

A. That is true. When I returned from my services in Boston I was teaching at the Northwestern University and held the position of instructor in medicine and was active in the teaching of the school.

Then I changed in 1942 and became Associate Professor of Medicine and Director of Dispensary Clerkships at the Chicago Medical School here in Chicago.

Q. Are you affiliated with that school at this particular time?

A. I am.

Q. Doctor, going back for just a moment, what qualifications are necessary to become a Diplomate in the American Board of Internal Medicine?

A. Yes.

258 Mr. Breen: I object. I do not see that has any bearing.

The Court: He may answer.

The Witness: Well, one must have the desire to specialize and then have three years of specialized training in this field, and two additional years; that is, five years must elapse since acquiring the M. D. degree; and then you have to pass an examination, both written and practical. And that was given the first time in 1936, and I took that examination, and the practical was given in 1937, when I was made a Diplomate of the American Board.

By Mr. Eardley:

Q. What is internal medicine, Doctor?

A. Internal medicine is a specialty dealing with various

internal diseases that the body falls heir to, conditions in the lungs, heart, cardio-vascular system, digestive system, arthritis, metabolic diseases, diseases of nutrition, poisonings.

Q. Is this particular practice distinguished from surgery?

A. Oh yes. I do no surgery whatsoever.

Q. What if any papers have you written or published?

A. On particular phases of internal medicine, cardio-vascular diseases, kidney diseases, ulcers, peptic ulcers and various internal ulcers. We have a fairly active research program going on at the moment.

Mr. Breen: Keep your voice up.

The Witness: We have an active research program going on at the moment at the Illinois Masonic Hospital where I am attending physician, also where I am consultant at the Oak Forest Infirmary.

Did you ask about the number of papers?

By Mr. Eardley:

Q. That is right, Doctor, what papers have you published?

A. Approximately thirty, I would say offhand. Some are in the press now. About thirty.

Q. Were these papers published in scientific magazines?

A. Yes.

Q. Do you recall the names of these magazines at this particular time?

A. Well, the Journal of the American Medical Association. American Heart Journal. American Journal of Medical Science. Journal of Digestion and Nutrition. Annals of Internal Medicine. Journal of Lab. Laboratory Clinical Medicine. Illinois State Medical Journal, and others 260 that I cannot recall.

Q. You testified, Doctor, that you are teaching at the present time at the Chicago Medical School. What courses are you teaching there?

A. I am the Director of all dispensary teaching; and I have a clinic there.

Q. Do you teach medical students?

A. Medical students, juniors and seniors. I have a clinic every week, at least once, at the Oak Forest Infirmary. I

have medical classes at the hospital that I am responsible for.

Q. What is the gastro-intestinal system, Doctor?

Mr. Breen: I object to that.

The Court: Well, counsel wants to ask a hypothetical question.

Mr. Eardley: That is right, just preparing the witness for a hypothetical question.

The Court: It is preliminary to it at this time. It appears to me it may be shown to be material. I overrule the objection.

A. The gastro-intestinal system is a tube that extends from the mouth to the end. It in effect makes a tube out of us, since anything existing in the gastro-intestinal system until it is absorbed is actually just in a tube. It 261 is in the inside of us.

Now, the gastro-intestinal system is important since we eat, we take in food which is broken down, starting in the mouth, and that food is passed on through the esophagus into the stomach and there further processes of digestion go along in the acid medium.

From then the food is passed into the small intestine where other very powerful enzymes work on the food to break it down still further until it becomes absorbed into the bloodstream, and there it goes to various depots and builds us up and gives us strength, energy, and so forth.

The residue of all of the material left passes from the small intestine into the large intestine, and it is from this area that we drink actually since there all of the water is absorbed into the body.

In this absorption then the residues are made thicker and the residues pass at varying intervals of time that we learn to call a bowel movement. Getting rid of the excess of the products and waste products of digestion are so accomplished.

Numerous glands go into this, the liver and pancreas probably being two of the most important which should be included in any discussion of the gastro-intestinal system. The liver supplying bile which neutralizes the 262 acid food as it comes out of the stomach and makes it alkaline in the small intestine where the enzymes from the pancreas are able to break the food down and make it available for us in the capillaries.

The gastro-intestinal system is a very important one. We need it. We could not live if there are obstructions and, of course, like other systems that we have, it does fall heir to disease, and processes on occasion.

By Mr. Eardley:

Q: Doctor, will you define the term colitis for us?

A. Colitis is a term that is used rather loosely at the moment; and indicates trouble with the colon.

Now, this trouble may be as a result of infection; or it may be as a result of irritation from one cause or source or another.

Colitis is a very broad term. There are numerous types which I think we would almost have to define all of the diseases of the colon in order to really come to a more specific analysis unless you want me to go further.

Q. I will show you Government's Exhibit 12, for 263 identification, at which time I will ask you to assume,

Doctor, that a tablet known as Cetabs, each tablet containing not less than 600 U.S.P. Units of Vitamin C, 30 milligrams ascorbic acid.

And assuming further these directions, one tablet furnishes the full minimum daily adult requirement for Vitamin C.

Now, keeping that in mind, Doctor, and referring to Government's Exhibit 10, for identification, and referring now to page 16 with the heading, "Why you need Vitamin C every day," "Do you want to age faster, or stay normally young? Stronger elastic blood vessels? Better digestion?"

Now, with those facts in mind, Doctor, do you have an opinion based on a reasonable medical certainty, with your training education and experience, as to whether or not these tablets, Cetabs, will cure, if taken as directed, will cure, mitigate or alleviate the conditions described?

A. Yes, I have a definite opinion.

Q: What is your opinion?

Mr. Breen: I object.

The Court: On what ground?

Mr. Breen: We don't know what is in that exhibit. 264 your Honor, that he has in his hand, the periodical.

Mr. Eardley: It has been received in evidence.

Mr. Breen: It is in evidence, the whole document is in evidence, but he is looking at a particular page. What is on it?

• Mr. Eardley: What was read to him. •

Mr. Breen: The whole thing was not read to him. I think the whole thing should be read, not an abstract of four or five lines.

The Court: Well, I haven't read it, myself; so I do not know. This paragraph would be sufficient for him to base an opinion on, wouldn't it?

Mr. Eardley: We do not complain that everything in there is a misrepresentation, but we complain that certain things in there are false and misleading and that is why I asked this witness that particular question.

Mr. Breen: The whole thing should be before the witness and before the Court, and not an abstract of eight to ten lines.

The Court: Will you read that particular abstract, the paragraph that you direct the witness' attention to?

Mr. Eardley: Reading now from page 16:

265 "Why you need Vitamin C every day. Do you want to age faster, or stay normally young? Stronger elastic bloodvessels? Better digestion?"

Mr. Breen: And I am objecting, we ought to have the entire paragraph read, the whole page in evidence.

The Court: Well, I think so, too.

Mr. Eardley: Let the witness read it all.

The Court: Let the witness read it, yes.

Mr. Breen: Let that be read into the record.

The Court: Yes.

Mr. Eardley: It is in evidence, your Honor, the whole document.

Mr. Breen: Yes, but not that part. We should not have to be held to culling all through that. That ought to be in the record now for the Court's benefit.

The Court: May I see it, please. Where is the paragraph?

The Witness: This was the paragraph referred to. (Indicating).

The Court: This one here in heavy type?

The Witness: Yes, I think that is where it is.

Mr. Eardley: Judge, would you like a copy of this as you go along? We have an extra copy here. (Handing document to the Court).

266 The Court: Oh, have you?

Now, Doctor, have you read the entire page or have you read just one paragraph?

The Witness: I have read that one paragraph and the headlines of the other sections and parts here.

The Court: I suggest you read the entire page. I see no necessity of reading it into the record, Counsel, as long as the pamphlet is admitted in evidence.

Mr. Breen: That is all right.

The Court: Before answering the question, I suggest you read that.

The Witness: Shall I answer the parts as I come to them or wait until I have—

The Court: I think you ought to read that whole thing, first.

(Thereupon the witness read the page indicated.)

The Witness: Shall I start in at any time?

The Court: Yes, you may.

The Witness: I have a very definite opinion about this material after reading it.

Mr. Breen: Read the question, please, the last question.

(Last question read.)

267 Mr. Breen: I object to that, your Honor, unless they will indicate in this periodical on this page that somewhere it is charged he stated it will do that.

The Court: Q. Doctor, you have read this page now; is there any statement in there that means that if taken as stated here that it would cure, alleviate or remedy any of these conditions?

Mr. Breen: If there is, the Doctor should read it into the record.

The Witness: This whole page or two pages of material is put down here—

Mr. Breen: I object now to any conclusions of the witness. Let us have the fact. Point that out to us.

The Court: Let him answer first before the Court will rule.

Mr. Eardley: That is what I would like the Court to do, allow the witness to answer.

The Court: Proceed.

The Witness: The statement is made on every line almost in this whole two pages, indicating some of the things that are what we would consider half truths; that is, there is an element of truth in any of the essentials as explained in regard to Vitamin C.

268 On the other hand, some of these features of Vitamin C are so worded here that it would certainly take me quite some time to, and I am sure that the average person

would never figure out, that it was not Cetabs that is indicated as being necessary to keep you from premature age, and from needing sound teeth and gums and stronger elastic blood vessels and digestion and all that sort of thing.

Mr. Breen: I object and move to strike his whole answer.

The Court: Will you re-read the question, the first part of it, Mr. Reporter?

(Hypothetical question re-read.)

A. I do, and I say no.

Mr. Breen: Now, I object. Nowhere, your Honor, have they produced any statement that Vitamin C will do anything included in that question. This whole exhibit—

The Court: Well, the witness may answer subject to your objection. The Court will consider it further.

Have you completed your answer?

The Witness: No, I would like to qualify my answer, if I may. And taking up these points as they are taken up in this pamphlet—

Mr. Breen: Now, I object to that. He should answer the question.

269 The Witness: I did. I say, no.

The Court: He may explain his answer. You may explain it.

The Witness: In the first place, it is definitely known that Vitamin C is necessary as a daily ration. We must have Vitamin C. However, in this country it is without question, except for individuals who are insane or who are food faddists of one sort or another, or who for one reason or another are put on a very rigid dietary management, that these individuals obtain adequate amounts of Vitamin C in their diet.

Now, our cooking, as is mentioned here, may destroy some of them but we very seldom cook orange juice which is mentioned here, and actually it would be very difficult not to obtain the proper amount of Vitamin C in the average well-balanced, well-selected meal today.

Now, I object to this on the general grounds that this might lead someone to take, as it says right here, 1 tablet—

Mr. Breen: I object to that.

The Witness: It says right here, and it recommends, one tablet furnishes the minimum daily requirement, which might lead some unsuspecting individual into continuing an unbalanced diet and give them a false sense

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of security that they are doing everything they should to maintain their health standards and in our country that is not the case at all.

I do not see how anyone could, when I spend as much time as I do trying to get people to eat a proper well-balanced diet and instructing them in how they should live to get the most out of their health, in this life and living. And I resent very much having someone say that you can get this in a pill because I do not think that is at all possible.

Now, that is a general answer to this.

Specifically, I would say that there would be no effect on keeping a person young or retarding premature old age.

I would say that there would be no liver problems develop, as is mentioned here.

Stiff joints, it says here, may be starved ones. Stiff joints may be anything. They may represent a severe bone disease, old long-standing ankylosis or old arthritis and have nothing to do with Vitamin C deficiency whatsoever.

Notwithstanding the fact that Vitamin C, when Vitamin C is deficient, scurvy is produced which results sometimes in hemorrhages in the joint. Now, hemorrhages come from ruptured capillaries and not from any of the larger vessels. So that actually one has to be greatly depleted in his Vitamin C before any of those conditions here are mentioned.

Now, it says here, which I think is quite heinous, that it is discovered Vitamin C acts like insulin. I would take great exception to that statement and I think that that is a very flagrant example of everything wrong. I would just be very critical of telling diabetics, where I am telling him to rearrange his diet, rearrange his want of insulin, that they could do better by taking Vitamin C which acts like insulin. That, as far as I am concerned, is not true at all, that is very false, and might be very, very dangerous for someone to cut down their insulin intake on the basis of taking one tablet for a minimum daily requirement of Vitamin C per day.

Mr. Breen: Doctor, while you are right on that point, may I—

The Witness: Is this cross examination now?

The Court: No, not now, he just wants—

Mr. Breen: What you have referred to, is that a quotation taken from some document?

272 The Court: This refers to—

The Witness: It is a reference in there.

Mr. Eardley: I object to that as immaterial anyway, it is stated in the pamphlet.

The Court: I think counsel wants to find out what paragraph that is in.

Mr. Breen: What was the witness reading from, what particular part?

The Court: Refer to that.

The Witness: "Vitamin C for diabetics. Discovery that Vitamin C acts like insulin,"—

The Court: Whereabouts is that, Counsel?

The Witness: The bottom of the first page.

The Court: The bottom of the first page?

Mr. Breen: The bottom of the first page, read that particular paragraph.

The Court: The first column or the second?

The Witness: The third column.

The Court: All right. Will you read that?

The Witness: You mean out loud?

The Court: Yes.

Mr. Breen: Yes.

The Witness: (Reading):

"the hormone used for the relief of diabetics is among
273 the latest contributions"—

Mr. Breen: Pardon me. Let me suggest that you start out with "discovery that Vitamin C."

The Witness: I read that.

Mr. Breen: What is that?

The Witness: I read that.

Mr. Breen: No, you did not, I beg your pardon.

The Witness: Yes, I did.

The Court: Will you read that paragraph that has to do with that?

The Witness: "Vitamin C for diabetics." And beginning again:

"Discovery that Vitamin C acts like insulin, the hormone used for the relief of diabetics is among the latest contributions of India's scientists. Professor S. Bamerjee of the School of Tropical Medicine, Calcutta, has found that the action of Vitamin C is very much like that of insulin as regards the utilization of carbohydrates. The scientist found that production of insulin

is markedly reduced when experimental animals ate food lacking in Vitamin C."

The Court: You may continue on with the rest of your answer without interrupting Counsel, you may cross
274 examine later.

The Witness: Now, Strong elastic blood vessels." I suppose that has reference to fairly large ones; they are not qualified. I would say there would be no relationship, except as far as the capillaries are concerned, where with a severe deprivation of Vitamin C hemorrhage develops, that I mentioned before.

Now, "Sound teeth and gums."

Again, he asks here: "Do you want sound teeth and gums?"

Of course, the answer is yes, everybody wants sound teeth and gums. As a matter of fact, however, one needs to have a very severe deprivation of Vitamin C before anything happens to the teeth and gums as happens in scurvy.

Actually it is the imperfect teeth and gums that develop with an individual, and it may be found there are a number of factors such as poor absorption of some of these vitamins, that might just cut a person's appetite due to those infections around the teeth and around the gums, and there would be no relationship to Vitamin C. In other words, a vitamin taken in larger doses than one tablet furnishes the full minimum daily adult requirement, one tablet would
275 actually be ineffective, I would say, in all cases in this country today.

Now, in India there may be a different situation or standard, but I am not in India, I am in the U. S. A. here in Chicago.

Now, as far as better digestion is concerned, we have criticized that statement implied in here that Vitamin C would improve digestion. As far as I know, the enzymes which are developed, and I mean in the gastro-intestinal system, start in the mouth, started by the saliva and start with the carbohydrate digestion, and the hydrochloric acid and pepsin, and with the carbohydrate metabolism in the stomach and continues beginning with the fat and protein digestion in the stomach; and continuing in the small intestine; and I see no reason for assuming that this digestion that we speak of would in any way be affected by Vitamin C.

Vitality. Every person who comes into my office today tells me how tired he is. We have just gone through a long period of difficulty with this war. That is true of people who are working and also people who are in the home. Actually standing in line for this preparation or the other, in the way of buying foods, is very difficult, and so is 276 working under conditions we have to work under are very difficult. However, I certainly would not give people one tablet of Vitamin C and expect that to answer all the causes of being fatigued and for loss of vitality, because there are many reasons for fatigue and loss of vitality.

Now, the first thing I would do, of course, with anyone of these people, would be to put that patient down in my office and obtain a history, and their habits in their private lives as well as their working activities; and then do a physical examination to find out if the patient was really anemic. Or if the patient had a poor set of shoes and was standing too long. There are many reasons, many causes for lack of vitality. I could not imagine myself giving a person a tablet of Vitamin C and hoping that all would be well with that particular individual. And that includes the summer tiredness as well as the lack of vitality.

And certainly there is no effect on the basis of staying young or aging faster from the taking of Vitamin C as is here recommended.

Heart trouble is another heading I see here. Recent research, and I mean quite recent research, indicates that 277 lack of C may be a contributory cause of heart inflammation, heart enlargement and heart failure. If afflicted your physician will advise you if dietary defects are involved.

Now, I know of no Vitamin C, and this is what that is, Vitamin C, that is considered on this page, I know of no Vitamin C—heart disease or inflammation of the heart or enlargement of the heart or heart failure caused by a lack of Vitamin C.

Blood pressure. Closely related to Vitamin C is the newly-discovered Vitamin B. This, of course, is found on this page, but I do not think I will comment upon that.

The Court: Pardon me, there is a heading there on infection.

Mr. Eardley: Judge, I am going to have another doctor

who is a dermatologist and who will testify in that respect.

The Court: Oh, I see. Have you completed your answer, Doctor?

The Witness: Yes.

The Court: The Court is of the opinion the answer is proper and it may stand. You may cross examine.

Mr. Eardley: May I have the opportunity—

The Court: You have something further? Pardon 278 me. I thought you were through.

By Mr. Eardley:

Q. Doctor, what causes diabetes?

A. Diabetes is a hereditary disease, the cause of which is not exactly known. There is an improper utilization of the carbohydrates and sublimated fats, which is an inherited or inheritable constitutional disease. One thing common to most diabetics, and it is a disease of infrequent secretion, one thing in common to diabetics is the fact there seems to be an insufficient or improper acting insulin. At least a majority of the cases are controlled by the administration of insulin and by giving proper dietary management.

Q. Doctor, taking Cetabs as directed there, would that have any effect on a person suffering from diabetes, would it cure or help to mitigate his condition?

A. No.

Q. Or relieve his condition?

A. No.

Q. Would it be advantageous or disadvantageous to take?

Mr. Breen: I object to the question, your Honor, on the ground no where in this pamphlet does it say it would do that very thing; no evidence in the record.

279 The Court: Overruled.

The Witness: I would say, as I stated before, that this would be quite dangerous for a patient to take Vitamin C hoping that the amount of insulin could be reduced for that particular individual. I think this is most pernicious since a person would get a false sense of security and might get into serious trouble.

By Mr. Eardley:

Q. I will show you Government's Exhibit 13A.

Mr. Eardley: I might point out to the Court at this particular time that this Doctor is an expert on internal medi-

cine and we are just pointing out certain phases of this particular document, and the statements made that have application to this particular doctor's training.

By Mr. Eardley:

Q. Doctor, assuming a product known as Ormotabs, which contains sarsaparilla root extract, 4-1, kelp, sassafras bark, papain, chlorophyll and excipients.

And further keeping in mind, Doctor, the directions: As a dietary supplement, for experimental use, 2 tablets provide approximately 200 per cent of the daily adult requirement for iodine, together with sarsaparilla root, sassafras bark, papain and 20 milligrams chlorophyll. The exact needs for which, in human nutrition, have not been officially established.

Now, Doctor, referring to Exhibit No. 10, page 8, and keeping in mind the things that have just been read:

Chlorophyll. Its ability to combat many deficiency, infections and chronic diseases suffered by millions of people is nothing short of miraculous. Chlorophyll has been proved the key that can unlock the door to health and happiness for many whose lives are today blighted by pain and disease.

Now, Doctor, do you have an opinion based on reasonable medical certainty and from your training, experience and education, as to whether or not such a product so used might or could effect the cure, mitigation, treatment or prevention of the diseases mentioned?

A. I have.

Q. What is your opinion?

A. There would be no such use.

Mr. Breen: I interpose the same objection, your Honor, on the ground that nowhere in this document does it say it will do those things.

The Court: Overruled.

By Mr. Eardley:

281 Q. Why do you say that, Doctor?

A. In the first place, chlorophyll is not useful in our bodily economy at all. Chlorophyll is a chemical compound which is widespread throughout the plant anatomy and it forms, as you know, the green part or substance of plants. We are unable to use this material, and it has no effect whatsoever upon any of the things mentioned here in this page. I would say particularly in my own line, anemia.

Now, anemia is very common and can be quite a serious condition of the blood. Our blood should have the property constituents to enable it to care for our bodily needs. The blood must have hemoglobin in order to carry oxygen from the lungs to the various tissues. And it also must be able to transport carbon dioxide back to the lungs and there get rid of the carbon dioxide that we exhale.

It must also be able to carry foods and all the products of metabolism, rather the products of digestion, first to the various tissues where they are used.

Also the blood must be able to take the waste products 282 and clear itself of these waste products in the kidneys.

Now, anemia inhibits certain of these functions and patients do not feel well when they are anemic. However, there are various causes of that.

One is an iron deficiency anemia, so-called.

If an iron variety of anemia is determined, which can be done by simply taking a blood count, and determining the hemoglobin values and looking at the smear, looking at the cells and determining the size of the red blood cells, and irregularities in the shape of the red blood cells, and anemia certainly can be classified and diagnosed.

Now, there are various types of anemia, as I mentioned, the iron variety of anemia, or anemia where the so-called intrinsic factor is not present, or the extrinsic factor is not present in the system, and when these are found that particular deficiency should be made up; and chlorophyll, as far as I am concerned, not only—it could not possibly make up for any type of anemia of which I am aware.

Q. Doctor, keeping in mind the same product, chlorophyll—chlorophyll came through the experiments with flying colors, succeeding where so many other treatments 283 for anemia had failed. And today chlorophyll is recommended for anemia sufferers because of its stimulating effect on blood-forming organs.

Have you an opinion based on a reasonable medical certainty and from your training, experience and education, as to whether or not such a product would or could mitigate, prevent or cure the conditions just mentioned?

A. Yes, I have.

Q. What is your opinion?

A. And that is very unfavorable. I do not believe chlorophyll would have any such effect.

Q. Now, keeping in mind the same product, Doctor: Chlorophyll has also reached out to extend its benefits to persons suffering from arteriosclerosis, thickening and hardening of artery walls. This "wonder blood" of the plant world has also been administered to persons suffering from cardiac hypertensions and other heart ailments.

Doctor, have you an opinion based upon reasonable medical certainty and from your training and education and experience as to whether or not such a product so used might or could effect a cure, or treatment of the conditions just mentioned?

A. I have.

284 Q. What is your opinion, Doctor?

A. I think it would be entirely ineffective in the conditions that you mentioned.

Q. Why, Doctor?

A. In the first place, the arteriosclerosis problem, of course, is a great one in the world today and becoming greater since we are living in an age where people are getting to the older age groups with each decade. We are living longer now than we did years ago and centuries ago.

Now, with this increase in age there is a huge increase in the degenerative diseases which come about in the older age groups.

Now, the older people, as we know, suffer from this condition, hardening of the arteries or arteriosclerosis, which is a degenerative problem and occurs through the linings of the vessels, the large blood vessels of the body becoming ruptured and ulcerated, and calcium salts are deposited there.

Or another type of sclerosis develops in some vessels where the middle layer or medial layer becomes hardened and calcified.

Then there is still a third type of arteriosclerosis that
285 comes to mind where the small arteriole blood vessels become hardened as a result of wear and tear in people living, in and of itself, and becoming a little bit older. In fact, degenerative processes are present, which arteriosclerosis has been shown to be, and in view of this I think it is impossible for such a preparation to have any effect upon the progress of a degenerative type of disease.

And not only that, I think it is all quite mean to attempt to hold out the hope of staying such a degenerative process

by the simple expedient of taking more chlorophyll which, of course, if it had much effect would have been known a long time ago anyway, and also everybody would benefit from it by the expedient of having eaten chlorophyll in these green things for all of their adult lives; therefore, I would be very critical of this statement.

There are other things here about that which alarm me. Tuberculosis infection has been proven in case after case of great value in tubercular infection and acute diseases.

Now, acute diseases would take in almost everything in the medical textbook, and tubercular infections, I would say, that there is absolutely no relationship between the 286 ingestion of chlorophyll and the progress of tuberculosis, which I assume this to be. With tuberculosis there would be no healing effect with the ingestion of huge amounts of this far more chlorophyll than is mentioned here. No relationship whatsoever.

Now, when blood pressure is high there are a number of reasons for increasing the blood pressure. One of them is the extreme hardening of the arteries. The large arteries become hard, they are not as elastic as formerly and the heart has to work much harder to get the blood around, and when the heart does that it becomes enlarged. If it did not become enlarged circulation would become so low an indication that the patient could not live.

Actually then you have to have to some degree a heart enlargement of certain types in your arteriosclerotic heart disease which, I suppose, is the one mentioned here.

I can see no benefit from the use of chlorophyll.

Q. I will show you Exhibit 14, Doctor. Assuming the product known as Ribotabs, and each tablet contains not less than 1,000 micrograms of riboflavin. And these 287 directions: As a dietary supplement, 2 tablets supply the minimum daily adult requirement set by the United States Government for relief of deficiency conditions 3 or more tablets daily, as required.

Doctor, keeping that in mind, and now referring to page 31 of Exhibit 10: Deficiency of riboflavin, Vitamin G, may often result in digestive disturbances, certain types of ulcers.

Doctor, have you an opinion, based on reasonable medical certainty and from your training, education and experi-

ence, as to whether or not such product so used might be effective in the cure, mitigation, treatment and prevention of the diseases just mentioned?

A. I have.

Q. What is your opinion?

A. There would be no benefit derived from the ingestion of this preparation as indicated.

Q. Why, Doctor?

A. Riboflavin, in the first place, we can take it up from the standpoint of the gastro-intestinal tract, and the ulcer problem, I think you mentioned ulcers?

Q. That is right, Doctor.

A. The ulcer problem has been very close to me for some time. I have given a great deal of time and thought to trying to determine the cause of this very common 288 disease. And from the standpoint of the work that has been done, both experimentally and with human beings in the way of research, I would say that there is no evidence that riboflavin deficiency is, (a) either present or would (b) have any effect in healing that condition.

As far as I am aware, this problem is concerned mostly with the production of acid in the stomach, and since no cases have ever been reported where symptoms are present when the acid is not in the stomach, I must assume that there is some connection between the amount of acid present and the production of these ulcers either in the stomach or at the outlet of the stomach as in the duodenal type of peptic ulcer.

Now, if the patient had an ache or a lot of pain somewhere in the stomach, I might not worry about that so much if they put their faith in taking riboflavin tablets for the correction of this ulcer; but I must be very critical of this whole page when I know some of the complications of ulcer.

If an ulcer is allowed to go on unchecked, it is entirely possible that the ulcer will eat down and over the blood vessels and it will erode with this great amount of acid 289 in the digestive property there, it will erode through the wall of the blood vessel and hemorrhage result.

Now, that hemorrhage is a serious thing and patients have been known to die from a hemorrhage.

Another complication that may develop here is that the

highly potent digestive juice may well go through the whole wall of the stomach or the first part of the intestines. If that is true, perforation results and the whole contents of the stomach is poured out over the peritoneal cavity and peritonitis result and that certainly is a very serious condition which necessitates immediate surgical intervention.

Then by inadequate treatment and improper treatment, such as implied here, with a tablet of riboflavin, it would be entirely inadequate for handling this problem, a long time may go on and neither of the beforementioned complications occur, nevertheless, with the continual breaking down and ulcerating, then healing of the ulcer and ulcerating and healing and back and forth, a scar would form which would be hard and cause an obstruction to the free passage of the stomach content into the lower bowel and a so-called obstruction of the gastro-intestinal system would result, which of course is not compatible with 290 life and living.

Therefore, I think the instructions given here are certainly a flagrant example of misinformation.

The Court: The Court will recess for ten minutes.

(Recess.)

The Court: Proceed.

By Mr. Eardley:

Q. Doctor, keeping in mind the product Ribotabs, riboflavin and high blood pressure. A new theory of the origin of some types of high blood pressure, tracing it to a chain of chemical influences in the body, including a deficiency of the Vitamin riboflavin.

That is on page 33.

Keeping that in mind, Doctor, do you have an opinion based upon a reasonable medical certainty and from your training, education and experience, as to whether or not such product so used might be or could be effective in the cure, mitigation, treatment or prevention of the disease mentioned above?

A. I have.

Q. What is that opinion?

A. It would not be effective.

Q. Why, Doctor?

A. My reasons for stating that are these: Almost

291 everything has been both blamed for and hailed as a cure for hypertension.

The answer has not been definitely decided as to the cause of hypertension but certainly things have come out of very extensive work in this field which I think are worthy of mention in this particular place.

In the first place, it is a mistake to call hypertension a disease. Hypertension is not a disease process. Hypertension is a symptom of many disease processes. Therefore, I would have to be critical of using this riboflavin tablet for what might represent various sets of diseases or conditions.

Now, hypertension—

Q. Pardon me. What do you refer to there, Doctor?

A. Riboflavin in the use—for the use and treatment of hypertension.

Now, to go back to hypertension, it must be handled, in my opinion, in this way. The patient must be seen, a medical history obtained, a physical examination done, and various tests done to determine whether the blood pressure is really up or not. Then having determined that the level

of the blood pressure is over what is commonly accepted 292 to be normal, and what influences that blood pressure in a routine way, and then a determined examination must be done both physically and in the laboratory to determine what organ or organs are affected not by hypertension but are diseased primarily causing the hypertension.

For example, the kidneys have been always blamed for hypertension ever since the days of Richard Bright, and the kidneys have caused about 5 per cent, or have been claimed to have caused about 5 per cent of all of the cases of hypertension.

In recent years not only the type of disease that we know as Bright's disease and nephritis so-called glomerular nephritis, in addition other conditions have been found to cause hypertension; obstruction of the urinary tract. In fact, the urinary tract entities, separate from the so-called Bright's disease, have been found to be a causative agent in the production of hypertension.

If these are found and the obstruction relieved or the infection cleared up, then the hypertension is improved.

Then there are the endocrine glands that have hypertension. And beyond the adrenal glands there are tumors

which form and then there is some increase in the blood pressure which comes on in attacks that can be quite serious.

If this type of disease is present, then the taking of small doses of riboflavin will be entirely ineffective in the properties of alleviation of this condition. What has to be done there is the removal of the tumor by surgical approach.

In the case of hyperthyroidism where there is a very active thyroid gland, the blood pressure increases and often comes to a level that is commonly termed hypertension. The tablet, riboflavin, again would be entirely ineffective in relieving of this condition. The treatment must be directed toward the part which is involved.

Also, in heart disease itself, if there is a damaged valve, and circulation is inadequate, the heart will work harder to make up for this deficiency in circulation and try to overcompensate for this deficiency of circulation by increasing its rate and increasing the strength of it thereby producing hypertension.

Obviously in this condition, as well as others, even if such a small dose of riboflavin would be effective in reducing the blood pressure, it would be criminal procedure since it is necessary to keep the blood pressure up in order to maintain the life of that particular organism.

Of course, I am saying it is not effective, but if it were it would be a distinct disservice to the patient to have his blood pressure lowered when that blood pressure actually is necessary to be increased to maintain an adequate circulation; and that fact is true in a great majority of these cases because the extent of the hypertension increases directly with the age of the group studied. In other words, the older people become the more hypertension is prevalent in the individual.

Now, with individuals having a narrowing of the small blood vessels in their kidneys it is necessary for them to maintain an increased blood pressure, compensatory hypertension if you will, it is necessary to maintain that increase in the blood pressure to maintain adequate circulation. Although it is unfortunate, it is true that blood pressure in these instances must remain, so even if this material were

effective, which it is not, it would still be wrong if used as suggested here.

Q. Doctor, I will show you Exhibit No. 15. Doctor, assuming a product Fero-B-Plex, improved formula

Vitamin B Complex, plus iron. Contains high quality yeast fortified with thiamin, riboflavin, niacin, dicalcium phosphate, iron sulphate, copper sulphate and necessary excipients.

Three Fero-B-Plex tablets,—still keeping in mind the same product,—three Fero-B-Plex tablets contain:

Vitamin B-1 (Thiamin).....	1,000 micrograms
Vitamin B-2 (riboflavin).....	500 micrograms
Niacin (P-P Factor).....	4,500 micrograms
Iron (from iron sulphate).....	45 milligrams
Copper (from copper sulphate)..	50 micrograms
Calcium	150 milligrams
Phosphorous	120 milligrams

Still keeping that in mind, Doctor, and these directions: As a diet supplement, 3 tablets furnish the minimum adult requirements as follows: 1,000 per cent of Vitamin B-1; 25 per cent of Vitamin B-2; 300 per cent of iron; 20 per cent of calcium; 16 per cent of phosphorous. The exact need in human nutrition for niacin and copper has not been definitely established. Tablets may be swallowed whole or crushed and added to milk or juices.

296. Now, Doctor, referring to the other exhibit you hold in your hand, Exhibit No. 10, and keeping what has been read to you in mind—

The Witness: On what page in 10?

Mr. Eardley: Pardon me, Page 22, the heading, "Which of these troubles worry you? Lack of vitality. Poor appetite. Mild indigestion. Run-down feeling. Common constipation. Nervousness. Irritability. To enjoy that wonderful feeling you owe it to yourself to try B Complex with Iron."

Now, Doctor, having all of this in mind, do you have an opinion based upon reasonable medical certainty, and from your training, education and experience, as to whether or not such a product so used might or could be effective in the cure, mitigation, treatment or prevention of the things just mentioned?

Mr. Breen: I object on the same ground, your Honor, that nowhere in the record does it show that Kordel prod-

ucts have been guaranteed to do any such thing.

The Court: Well, I presume while the exact words are not used, by implication, by reference and implication they are advertising a product as being helpful to do these things.

Mr. Breen: This is not a civil procedure. This is
297 a criminal prosecution and every presumption that is
indulged in must be indulged in favor of the innocence
of the defendant. There is no presumption of guilt. The
burden is on the government to establish every material
fact essential to a conviction in a criminal case. Nothing
can be presumed.

The Court: The objection is overruled.

By Mr. Eardley:

Q. Do you have an opinion?

A. I have.

Q. What is your opinion?

A. I think that in my opinion this preparation would
be entirely ineffective in any and all of these conditions
mentioned.

Q. Why, Doctor?

A. Well, these terms, of course, are quite vague as used
here and may be due to a host of things. Without an exam-
ination of the patient, without a detailed history of their
habits, why these patients may be smoking a lot, they
may be drinking coffee all day and not sleeping; they may
have poor shoes; they may be trying to do too much work;
they may have two jobs; they may have almost any condi-
tion, physical or mental, to get such symptoms:

298 Unless some physician or some qualified person
would pass upon those and make a diagnosis to correct
the life and living habits of the individual, I think it would
be quite bad to expect the patient to make these diagnoses
of these symptoms here and then start treating them, as-
suming that there is a vitamin deficiency, then start treat-
ment with vitamins.

I think of another fact which I would like to criticize at
this point.

Mr. Breen: I object, your Honor.

The Witness: We do not know too much—

Mr. Breen: Just a minute. I object.

The Court: Overruled.

The Witness: A. We do not know too much about these vitamins. We are learning more about vitamins as time goes along.

Now, if we are going to use vitamins in an experimental procedure, I think that is quite all right, but one has to have control of the patient, and have observation of the patient, and know exactly what is going on, in order to evaluate what this particular product has done, so that information will be available for the use of other individuals so suffering.

This to me takes away all of the best idea of experimentation and just puts it down as a fact that all these conditions can be corrected with the use of this Vitamin-B-Plex.

Now, one more thing, Vitamin-B-Plex has in all, as I remember the list of figures, some 26 component parts, and of this number, the three that appear here have been found to have some effect upon humans, but nevertheless all the other Vitamin-B components are present, and if there are 26, roughly 26 components of Vitamin B known now as well as the other vitamins A, C, D, E and K, I would say this as regards the future of vitamins, that we possibly and most probably will have 150 or 250 vitamins before this whole thing is cleared up.

In other words, this is just the beginning in the era of vitamins and the beginning of all knowledge of any of the essentials of nutrition. Therefore, I think it may well be quite harmful to give patients an unbalanced type of vitamin rations.

By that I mean these daily requirements are quite all right for thiamin. The other parts of Vitamin-B products are quite low. That is not the way these vitamins are found in nature. They are found in the cell products and in the casings of rice and in rice polishings. They are found in here, and through all of our years our digestive system has become used to vitamins in that proportion.

Now, when you take and mix that up or increase the thiamin over some other type of vitamin that will, for all we know, upset the metabolism of nature and negate the value that might be true if the preparation was in proper form. That is something for the future and certainly nothing can be said any further, I think, regarding that here.

By Mr. Eardley:

Q. Keeping that same product in mind, with the same ingredients, "it is because this remarkable little group of the B vitamins are wonder-workers when it comes to toning up lax and lazy muscles and soothing jumpy nerves made raw by a deficiency of the vitamin-B-Complex."

Do you have an opinion, based on reasonable medical certainty, from your training, education and experience, as to whether or not such product so used might be or could be effective in the cure, mitigation or treatment of these matters just mentioned?

A. I have.

Mr. Breen: For the record, may I interpose the 301 same objection?

The Court: The record may show the objection and you do not have to keep repeating.

Mr. Breen: All right.

The Court: Let the record show it is objected to generally.

Mr. Breen: Very well.

The Witness: I have. I think this vitamin combination would be ineffective in any of the situations mentioned.

Mr. Breen: Keep your voice up.

A. In all the conditions mentioned on page 22, and that includes the calcium, iron and copper, which is mentioned.

If a patient is examined and is found to be run down and to have a poor appetite, and not feeling well for one reason or another, and anemic, if the patient were anemic and would need adequate doses of iron as in the situation here, or if calcium is indicated, it is impossible to obtain calcium by pills. It has been shown time and time again that pills do not furnish the proper amount of calcium and it is impossible to get adequate calcium dosages by pills, unless huge amounts are daily ingested. Milk still stands as the only good way to obtain calcium.

302 By Mr. Eardley:

Q. Doctor, I will show you Government's Exhibit 17 and Government's Exhibit 8A, and ask you to refer to those exhibits. Doctor, assuming a product known as Bolax. "Contains powdered senna leaves, uva ursi-leaves, buckthorn bark, licorice root, red clover tops, coriander seed, elder flowers, pale rosebuds, peppermint leaves, Afri-

can ginger root, fennel seed, Mexican saffron, anise seed, cyan flowers and excipients to prepare."

And keeping in mind, Doctor, the directions:

"Adults, one or two tablets as needed. Children, one-half to one tablet, or less, in proportion to age."

Doctor, referring to the exhibit known as "Nutrition Guide," page 18, and keeping the abovementioned things in mind, Doctor; "The result is acidosis, symptomized by headaches, fatigue and heartburn, drowsy days and sleepless nights; in later years hardening of the arteries and high blood pressure. There is a tendency toward colds, constipation and lack of appetite."

The Witness: Is that on page—

Mr. Eardley: Page 18, paragraph 1, Doctor.

303 The Witness: Yes.

By Mr. Eardley:

Q. Have you an opinion, based upon reasonable medical certainly and from your training, education and experience, as to whether such a product so used, might or could be effective in the cure, mitigation, treatment and prevention of the diseases just mentioned?

A. I have.

Mr. Breen: I object to that, your Honor. That refers to diet as well as product and you are only limiting to a part of the page.

Mr. Eardley: Yes, we will take up the rest of that with a nutritionist who will be here tomorrow and we will follow that up.

The Court: Overruled, he may answer.

The Witness: I have.

By Mr. Eardley:

Q. What is your opinion, Doctor?

A. I do not think this preparation would be effective in the conditions mentioned. I would be very critical—

Q. Why, Doctor?

A. —of the use of the word "acidosis" since that implies a very serious condition from a medical standpoint, and I do not think it is a time to be fooling with Bolax
304 when a person is sick enough to be considered in acidosis.

I might define acidosis. It has been defined variously and several conditions can cause acidosis. There is an increase in the production of acids, such as we have in your

uremic poisoning and diabetic coma, and a decrease of the plasma bicarbonate, and either one of these conditions or combinations of these conditions can cause a condition known as acidosis. Or perhaps better, acidemia would be a better term.

The blood is a very complex substance. It is a buffer solution, a buffering solution. In other words, you can even inject in the bloodstream directly an acid, an alkali and by so doing nothing happens, it stays within reasonable limits, because the blood is so buffered and has both types of salts present so the alkali is neutralized when it is injected, but the acid when it is injected is neutralized. So that it takes a lot to have any effect upon the blood by making the blood more acid.

We have a way of measuring the acidity of the blood and this is done by the measurement of the hydrogen ions. And we use a logarithm of the number of hydrogen ions in solution over the acid ions or alkali ions, or the O-H group, we have a way of expressing that by a logarithm which is called the Ph value, which measures in effect the acidity or the alkalinity of any substance according to the number of acid or alkaline ions which are available in solution.

Now, 7 is the scale of neutrality; that is, anything below 7 is acid and anything above 7 is alkaline. In so far as the bloodstream is concerned, the normal range is between 7.3 and 7.45, a very narrow range.

Now, the importance of this, I think, becomes a little more clear if I say that in all medical literature, only one person has ever survived, that has been reported, who developed a real acidosis under 7. The reading they took was 6.8 in that particular instance.

Therefore, when a person is in the last stages of kidney disease and all excretions of acid has been decreased so the acid stays in the bloodstream, or when the patient has uncontrolled diabetes and insufficient insulin so that the acetone bodies, so-called acid ketones remain in excess which decreases the plasma bicarbonate by virtue of there being acid and neutralizing the plasma bicarbonate which is in the bloodstream. These individuals are very ill. They demand hospital care, not only the usual routine examination but they demand hospital care and heroic measures to bring down this acidity which is present and de-

veloped because of the diabetic and uremic condition and that is a serious condition present.

Acidosis is a term which should not be bandied about and treated with these vegetables and herbs which, as far as I can see, might have a slight laxative effect but I would not be able to state anything further about that.

The Court: The Court will adjourn until ten o'clock tomorrow morning.

(And thereupon, the further proceedings in this cause were continued to Tuesday, March 19, 1946, at 10 o'clock a. m.)

307

United States of America

vs.

Laura Kordel, an individual trading
as Gotu Kola Distributors and
Lelord Kordel,

Defendants.

Consolidated Cases

45 CR 488

45 CR 490

46 CR 1

Before Judge Walter J. LaBuy

Tuesday, March 19, 1946,
10 o'clock a. m.

Court convened pursuant to adjournment.

Present: Mr. Robert C. Eardley, appeared for the Government; Mr. James W. Breen, appeared for the Defendants.

The Clerk: Consolidated Cause 45 CR 488, United States vs. Kordel, on trial.

DR. PAUL H. WOSIKA, called as a witness on behalf of the Government, having previously sworn, resumed the stand and further testified as follows:

Direct Examination (Continued:)

308 By Mr. Eardley:

Q. Doctor, I will show you Government's Exhibit 22, and again refer you to Government's Exhibit No. 10.

Doctor, assuming a product known as Garlic-Plus; contents as follows: Each tablet contains dehydrated garlic, parsley, watercress and excipients to prepare.

And, further, Doctor, these directions:

"Adult Directions: As a diet supplement. Two tablets with each meal. Less may be taken as desired." Assuming further, Doctor; "Note. A difference in med-

ical opinion exists concerning the value of garlic tablets in easing distress of high blood pressure. In favor of such value are the opinions of experts qualified by scientific training to evaluate."

And referring to Government's Exhibit 10, referring to page 14:

"Aid relief of dizziness and headaches, due to high blood pressure with 'Garlic-Plus' tablets. Garlic, parsley and watercress."

Have you an opinion based on a reasonable medical certainty and from your training, education, and experience, as to whether such a product so used might or could
309 effect the cure, mitigation, treatment or prevention of any of the abovementioned conditions or diseases?

A. I have.

Q. What is your opinion?

Mr. Breen: I object to the question, your Honor, for the record.

The Court: Overruled.

A. My opinion is that this material would be ineffective.

By Mr. Eardley:

Q. Why, Doctor?

A. As I explained in the earlier passages, hypertension is not a disease but a symptom of various types of diseases and I do not wish to repeat all that I said at that time about hypertension, but the material here has been used and recommended at various intervals of our medical development for the treatment of hypertension, and it has failed, it has been found entirely ineffective. There is no further controversy, as is stated on the label here, in the matter of scientific opinion. Scientific opinion states that this material is ineffective.

Besides that, it would be impossible to know from this what should be, how it would be checked, what anybody
310 would know from the standpoint of the pressure being reduced, is it from this material? We simply ask it and that is as far as it goes.

Q. Doctor, is your opinion the opinion of well-informed medical circles?

By Mr. Eardley:

Mr. Breen: I object.

Q. If you know?

The Court: What is the question?

(Question read.)

The Court: He may answer.

The Witness: Yes.

By Mr. Eardley:

Q. Doctor, keeping in mind the Lelord Kordel Garlic-Plus with the directions as previously read to you in the other question, and now referring to page 24, paragraph 1—or page 14:

“They are to be considered, at all times, only an aid to the relief of the painful headaches and dizziness caused by high blood pressure.”

Doctor, have you an opinion based upon reasonable medical certainty, and from your training, education and experience as to whether or not such a product so used might or could be effective in the cure, mitigation, treatment 311 or prevention of these abovementioned conditions of high blood pressure?

A. I have.

Q. What is your opinion?

A. My opinion is that this material would be ineffective in such treatment. It has been shown time and time again that this, like a lot of other things, extract of water-melon seeds and many other vegetable-like preparations, have been used and have been evaluated from the scientific standpoint as to their effect upon hypertension and the effects of hypertension such as headaches and the like; and the material not only does not influence, of course, the disease but it is ineffective in controlling the symptoms.

Q. Doctor, still assuming the Lelord Kordel's product Garlic-Plus, with the ingredients stated in the other question, and referring to Government's Exhibit 10, the same page: “If you suffer from the torturing pains of high blood pressure and hardening of the arteries, try ‘Garlic-Plus’ tablets, as have thousands of others.”

Have you an opinion based upon reasonable medical certainty and from your training, education and experience, as to whether such product so used might or could be 312 effective in the cure, mitigation, treatment or prevention of the diseases just mentioned?

A. I have.

Q. What is your opinion?

A. That it would be ineffective.

Q. Why, Doctor?

A. Because the ravages of hypertension which result finally in a hardening of the arterial system, are not influenced by any part of the disease, by any treatment such as a vegetable that we are discussing here. It is impossible to treat a degenerative disease of long standing and one which goes on anywhere from five to fifteen or twenty or twenty-five years in a patient's life, it is impossible to give them a pill of this size and have any effect upon the course of that disease.

After all, as I explained yesterday, in some instances hypertension is a worthwhile thing for the patient since it is necessary to increase the pressure to maintain circulation through the kidneys, for example. And even if this would be effective it would cause damage for some individual where the pressure would be lowered and they would be in trouble in a circulatory failure.

Q. Doctor, I now show you Government's Exhibit No. 23. Doctor, assuming a product Niamin: Each tablet contains not less than 10 milligrams of niacin (amide), 313 yeast, and excipients to prepare, and with these following directions appearing on the label:

"Adult directions (as a supplement to the diet) one tablet per day at meal times."

Now, Doctor, referring to Government's Exhibit No. 10, "Health Today, spring of 1945," page 25, the heading is:

"The factor said to be most essential in some cases of heart ailments: Headaches: High blood pressure due to nervousness a significant new treatment for heart attack, niacin came to light recently. Niacin is necessary to prevent the skin ailment known as pellagra; has been found to check heart attacks due to angina pectoris. This vitamin has produced some spectacular cures in cases of cerebral thrombosis, the blocking of the blood vessels of the brain with blood clots or plugs."

Now, Doctor, do you have an opinion based upon reasonable medical certainty and from your training, education and experience as to whether or not such a product so used might or could be effective in the cure, mitigation, treatment or prevention of any of the abovementioned diseases or conditions?

A. I have.

Mr. Breen: I object, your Honor, and submit that he ought to submit the second paragraph in conjunction with the first, get all of the facts in the hypothetical question.

The Court: Will you adopt counsel's suggestion and amend the question to incorporate the second paragraph as well?

Mr. Eardley: Judge, I do not think it is necessary under the present Act, under the charges that are brought about in this information.

The Court: What page are you referring to now, gentlemen?

Mr. Eardley: Page 25.

Mr. Breen: Page 25.

The Court: Which paragraph do you want?

Mr. Breen: He read the first, your Honor.

The Court: You suggest that the second paragraph be read which is headed "Niacin often relieves headaches," is that what you are referring to?

Mr. Breen: No.

The Court: What is the page?

Mr. Breen: "These new developments"—

The Court: That is the second paragraph on page 315 25. Oh, I see, the second paragraph.

Mr. Breen: Yes.

The Court: "These new developments"—I think the balance of that paragraph should be read, Counsel.

Mr. Eardley: Well, Judge, I can read the paragraph all right but in this particular cause of action there is no intent involved, and if these defendants are relying on this particular doctor, let him bring the doctor in here so the court can see him and so we have the right to cross examine him, which we have the right to do if the defense relies on a statement like that.

Mr. Breen: This is a pamphlet that is in evidence, your Honor, offered by the government.

Mr. Eardley: We do not say everything in this pamphlet is a violation.

The Court: No, I understand. I think when you are asking him his opinion, you ought to include the subsequent paragraphs, not only the second but the third paragraph.

Mr. Breen: That is right.

By Mr. Eardley:

Q. Doctor, will you read the balance of that paragraph there?

A. I have.

316 The Court: You have read it?

The Witness: Yes.

By Mr. Eardley:

Q. Now, have you an opinion, based upon reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of any of the abovementioned conditions or diseases?

A. I have.

Q. What is your opinion?

A. That the material is ineffective as and for the conditions recommended.

Q. Why, Doctor?

A. When nicotinic acid, which is not part of Vitamin B Complex, was first given to us from a medical standpoint, it was found that doses in sufficient amounts could cause a flushing of the patient's face, and vessel dilatation and further that the flushing itself was due to the capillary action of this material.

Now, it was further found that the material was only effective in capillary dilatation and it has nothing to do with hypertension which we are speaking of here in describing blood pressure.

317 We have a simple clinical method of measuring capillary tension, that is, measuring the pressure of the large arteries. And besides that, this was then found to be ineffective in these conditions, and a new preparation was found, the amide form of the nicotinic acid which we use with this flushing. This is simply one preparation, it is one complex of the Vitamin B Complex and would not be effective for the uses that are here indicated.

Now, as regards the second paragraph, I think that is a medical proposition entirely, it was written by a doctor or doctors and I would refuse to discuss that or have that purveyed to the public by anyone not qualified. And that goes for both the second and the third paragraphs.

Mr. Breen: I move to strike out the last part of the answer, your Honor.

The Court: Overruled.

The Witness: As far as the pellagra disease is concerned, that disease is fairly common, it has many manifestations, it has several but not all of the various types and combinations of deficiencies that have been found, and certainly one could not recommend this to stop the causes 317 of pellagra. It would be effective in alleviating a few manifestations, perhaps, if they were present.

Without a physical examination, without a history of longstanding dietary deficiencies, I think it would be impossible to take this on anyone's say so and get relief from any of these symptoms.

By Mr. Eardley:

Q. Doctor, taking one tablet as directed here, would that be effective in any way?

A. One tablet a day. I think the minimum dosage is more than this and there would have to be more than one tablet according to the most recent work that has been done.

Q. How about the diseases that you just spoke about?

A. Absolutely not. For example, in a case of cerebral thrombosis, then I think it would be awful to subject a patient to swallowing these pills when he is in such dire need of fluid intravenously and hospital care, and certainly there would be absolutely no effect in either dissolving or curing the cerebral thrombosis.

Now, a plugging of the blood vessel in the brain, the clots and plugs I assume are embolii which come from some other source, perhaps some other embolus usually originating in the heart getting to the brain through the 319 blood system. This material would be absolutely ineffective and not have any effect whatsoever upon that clot that is formed of embolus that lodges in the vessel.

In angina pectoris, if this is one of the heart ailments that is indicated by the heading here, it says "heart ailments," which would bring in the whole gamut of heart diseases, rheumatic heart disease, syphilitic heart disease, and endocarditis, there would be absolutely no effect of this material in introducing either a cure or for the alleviation of the symptoms.

Originally, because of this flushing, there was some hope that this material nicotinic acid might help in a case of angina pectoris. This has been shown to be false and there

is no indication at the present that this material can help.

Q. Doctor, assuming this product Niamin, and further assuming niacin in edema of kidney origin; do you have an opinion based upon reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of edema of the kidney?

A. Yes, I have.

320 Q. What is your opinion?

A. It would be ineffective.

Q. Why, Doctor?

A. Kidney diseases are—

Mr. Breen: The same ruling, I presume. I have an objection to every one of these questions.

The Court: Yes, the record may show the general objection.

Mr. Breen: General objection, that is right.

The Court: It is not necessary to repeat it all the time.

A. The kidney is a very interesting organ. It is composed of a number of units which constitute the nephron or tubular system.

May I use the blackboard to show what this tubular system consists of?

The Court: Does counsel wish a diagram?

Mr. Breen: I do not think it is necessary at all. You are doing very well.

The Court: As far as I am concerned, you are doing all right.

By Mr. Eardley:

Q. Can you state, Doctor, very briefly?

A. There are two major portions in the kidney
321 which have to do with the excretion of material. First, the glomerulus, which begins the filtration process. The blood comes into the glomerulus under increased pressure, that is, pressure inside capillary walls, greater than the pressure outside the capillary walls, and therefore a great deal of extraneous material in the blood filters into the capsule.

Now, this capsule leads off into a tube which at first is straight and then becomes very convoluted. It straightens out again and then returns to convolutes again, becoming more tortuous in its path, and having certain convolutions,

and being in that circular coil, it leaves the tubule and it straightens out and starts a collecting tube that is formed which allows the urine which has been formed to pass into the pelvis of the kidney and from there it is excreted.

There are many ways in which the kidney becomes diseased. This is speaking, of course, of kidney disease and kidney deficiency.

In the first place, glomerulus nephritis is a fairly common form of kidney disease; the original form of Bright's disease which is known now, and the effect of the glomerulus is the filtration of all material from the bloodstream.

322 That is called nephritis in the ordinary accepted terminology.

Nephrosis, which is referred to in almost the same paragraph, is an entirely different condition that is quite distinct. In this instance the glomerulus of the kidney is in proper functioning order but the re-absorption rate from the convoluted tubules I have mentioned has been impaired and the clinical picture is different in these two instances.

Both have rather obscure etiology which has not been determined, but in a negative way I may say that niacin is certainly not only the cause, but if an animal or human being is deprived of niacin there will be a deficiency developing but this will not be the usual type of kidney disease as is indicated here.

Neither will niacin prove effective in the cure of kidney disease as we know it today.

Mr. Eardley: You may cross examine.

Cross Examination by Mr. Breen.

Q. When was your attention first called to these periodicals?

A. Which periodical?

Mr. Eardley: I object, not proper and immaterial.

323 The Court: He may answer. There is a question about which periodical.

The Witness: Which periodical?

By Mr. Breen:

Q. The one that you have been testifying from.

A. This.

Q. The one in your hand, for example.

The Court: Exhibit 10, Health Today.

The Witness: Exhibit 10. Last week.

By Mr. Breen:

Q. Last week. Where did you see it?

A. In my office.

Q. How did it get there?

A. What?

Q. Do you know?

A. I did not hear you.

Q. I say, how did it get to your office?

A. Oh, these gentlemen here brought it to my office.

Q. What gentleman, here in the court room?

A. Yes.

Q. Which one?

A. This straight line, Mr. McGuire and Dr. Karlan.

Q. Did they have any conversation with you in regard to it?

324 A. Yes.

Q. Tell the Court what it was.

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

By Mr. Breen:

Q. Were any of the Lelord-Kordel products shown to you at that time?

A. No product.

Mr. Eardley: I object, still immaterial.

The Court: Overruled.

The Witness: No products were shown to me.

By Mr. Breen:

Q. No products. When did you first see the Lelord Kordel products?

A. I have yet to see any of them.

Q. You haven't seen any of them at all. You did not submit them to any laboratory tests, did you?

A. No.

Q. Have you made any examination of them at all?

A. I have never seen one of the tablets.

Q. Never have. Are you a member of the American Medical Association?

A. I am.

Q. You are a licensed physician?

325 A. I am.

Q. Are you opposed to all products sold of this character for self medication?

A. For self medication?

Q. Yes.

A. Yes.

Q. Do you know whether or not physicians prescribe vitamins for patients?

A. Do I know?

Q. Yes.

A. Oh, of course they do.

Q. They do?

A. I do, too.

Q. You do?

A. Yes.

Q. Do you know, Doctor, how many drugs there are in medical use?

Mr. Eardley: I object to that, immaterial.

The Court: Overruled.

The Witness: How many drugs in medical use?

By Mr. Breen:

Yes.

A. The total number?

Q. Yes, do you know?

326 A. I would have no idea.

Q. How?

A. I would have no idea how many drugs are in total use.

Q. Do you know how many drugs there are in herbal use?

A. No.

Q. Do you know how many drugs are in nutritional use?

A. Nutritional use?

Q. Yes, vitamins and so forth?

A. I do not think it could be called a drug, a vitamin. A vitamin, you see, is food.

Q. The Food & Drug Act calls it a drug, doesn't it?

A. That I would not know. I do not think they do.

Q. Could you testify, Doctor, as to the action or efficiencies of each of these?

A. You mean efficacy of each?

Q. Of all the drugs, all the drugs you know about?

A. Yes, I would of all I know about, yes.

Q. How many do you know about?

A. It is hard to put a number on that. I have forgotten.

quite a few; I have no doubt. I do not think I care to put a number on that.

Q. Have you ever changed your opinion as to drugs?

A. Surely.

327 Q. Yes. A further study of the Lelord Kordel drugs might cause you to change your opinion?

A. I object to the use of "further study." There has been no study here that I can find that is worthy of that name at all.

Q. You haven't made any study at all?

A. Further study, you said, and I say no study has been made, from what I can gather from the reading of that.

Q. If you made a study of the Kordel drugs—

A. Kordel drugs?

Q. —you might change your mind?

A. It is possible.

Q. When you were first shown the literature of the defendant, were you told to make a careful study of it?

A. No.

Q. Did you make a careful study of it?

A. I went through and read the material and I gave my opinion as to what I thought of the effectiveness of the analyses that were shown there.

Q. Now, tell the court from your examination of this periodical now in evidence, Exhibit 10, what exact representations are made for each of the products.

Mr. Eardley: I object to that. I believe that is for the Court to determine.

328 The Court: Sustained. That is a question for the Court.

Mr. Breen: He has testified, your Honor. We have a right to know what representations are made in this periodical.

The Court: No, I think that is for the Court.

Mr. Breen: The Court doesn't have to dig through and find it out. It is the duty of the government to let you know what it is.

The Court: No, I think that is a question for the Judge. By Mr. Breen:

Q. Is it your opinion, Doctor, that that literature constitutes a claim that the products would prevent, cure, treat and alleviate certain conditions?

Mr. Eardley: I object to that. I believe that is the Judge's prerogative.

The Court: Sustained.

By Mr. Breen:

Q. Will you define the word "prevent," Doctor, as you understand it?

A. I did not get that.

(Question read.)

A. Prevent?

329 Q. Yes.

A. In a medical sense?

Q. Yes.

A. Well, it is to stop.

Q. You testified that these products would not prevent disease. What did you mean by the word "prevent"? Define that.

A. You mean I have said these would not prevent disease from developing? In other words, they would not stop disease from developing? They would not hinder disease from developing, have I said that?

Q. Will you define what you mean by the word "cure"?

A. A cure is a complete eradication of disease processes formerly present.

Q. Will you define the word "treat"?

A. Treat is to attempt the alleviation of symptoms or diseases.

Q. Will you define the word "mitigate"?

A. Mitigate is a partial alleviation, I would say, in this same sense.

Q. Doctor, aren't those words conflicting and ambiguous, and to some degree exclusive of each other?

A. I think not.

Q. Have you made a study of the Food & Drug Act
330 as amended?

Mr. Eardley: I object to that.

The Court: Sustained.

By Mr. Breen:

Q. You have been shown these products, have you not, Doctor, the exhibits?

A. As exhibits herein contained. I suppose there is something inside, I haven't seen it.

Q. Did you see the labels on the outside?

A. That I did, yes.

Q. Will you explain to the Court where these products are misbranded on the labels?

Mr. Eardley: I object to that. That is the Court's prerogative.

The Court: Sustained.

By Mr. Breen:

Q. Is it your opinion, Doctor, where a disease is mentioned in conjunction with a drug title that means the drug will prevent, cure, alleviate and treat that condition?

Mr. Eardley: I object to that.

The Court: Sustained.

By Mr. Breen:

Q. Doctor, is medicine an exact science like mathematics?

A. No. Medicine includes all of the sciences and probably all of the arts as well.

Q. But it is not an exact science up to the present time, is it?

A. That is true, we are attempting to do that more and more and have made some progress in that direction.

Q. Doctor, if a patient goes to a number of physicians, is it possible the diagnosis would be the same by each physician?

Mr. Eardley: I object to that, immaterial.

The Court: Overruled.

The Witness: Would you repeat that, please?

By Mr. Breen:

Q. If a person went to a number of physicians, would the diagnosis of each physician be the same in each case?

Mr. Eardley: If he knows.

The Witness: That is a very difficult thing for me to say. I do not see why I should be called upon to say that, to answer that. Is this in the same year, or the same ten years or the same decade or the same day?

By Mr. Breen: The same day.

332 And the same symptoms entirely?

Q. Yes.

A. Oh no, there may be differences of opinion between physicians.

Q. Would each of these doctors treat the patient in the same way?

A. Probably not; but one thing, they would examine the patient.

Q. Is it possible, Doctor, that some physicians might differ with some of your views on the relative value of various treatments?

A. I would hope so. Through that we make progress by difference of opinion.

Q. Are you in sympathy, Doctor, with other schools of healing?

Mr. Eardley: I object to that, immaterial.

By Mr. Breen:

Q. Such as osteopaths and chiropractors?

The Court: He may answer.

By Mr. Breen:

Q. And naturopathy?

A. Very decidedly.

Q. Have you an opinion, Doctor, on homeopathic medicine?

333 A. Yes.

Q. Is it favorable or unfavorable?

A. Unfavorable, from the sense that they feel they could practice medicine themselves without going to a skilled doctor and that they can step right out and not get into trouble with these various and sundry drugs.

Q. Have you an opinion, Doctor, on Christian Science?

Mr. Eardley: I object to that.

The Court: Sustained.

By Mr. Breen:

Q. What is your opinion of psychotherapy?

A. I don't know that word.

Q. Psychotherapy?

A. Oh that. I have a distinct opinion as to that. It has proven very helpful in certain selected cases. These cases are usually ones who have had a complete working physical examination and laboratory survey, and then if no distinct diseases can be found or organic problem, then these people are or have a mental problem that is not solved, and certainly I have sent many of my patients both to psychologists and psychiatrists for aid.

Q. Have you any opinion as to the value of suggested therapeutics?

A. Suggested?

334 Q. Suggested therapeutics?

A. In what relation?

Q. Generally?

A. You mean if a psychiatrist would use suggestion or if a psychologist would?

Q. Or a medical man?

A. Or just a witch doctor?

A. A medical man, yes, I think suggestive therapy in some cases has been very helpful. I have used it myself, come to think of it.

Q. Would you say that persons who use vitamins practice it?

A. Should not. There is a firm foundation for the use of vitamins, and the use in these preparations of Vitamin C, if Vitamin C is indicated it should be used, but there is not suggestive therapy there.

Q. Isn't it a fact, Doctor, that many drugs formerly used by the medical profession and highly touted at the time were subsequently found to be dangerous or worthless?

Mr. Eardley: I object to that, immaterial.

The Court: He may answer.

A. Oh, there has been a change in our pharmacology.

335 By Mr. Breen:

Q. Would you say that the Lelord Kordel products in and of themselves were harmful?

A. As indicated for usage, yes, as I have testified—weren't you here yesterday?

Q. In themselves, are they dangerous?

A. In themselves as used, yes, I testified to that yesterday.

Q. Forget about the literature.

A. I cannot, it is a part of it.

Q. Are they in and of themselves dangerous or harmful?

A. What literature?

Q. Exhibit 10.

A. Oh, call it Exhibit 10. Literature to me is medical literature, you see. All these periodicals are medical periodicals which have some meaning.

Q. Forgetting all about Exhibit 10, would you say that the use of the Kordel products would be harmful used separately?

A. Forgetting Exhibit 10, I do not see how the Kordel

products could be used by anyone. The labels do not give indications that a person could follow.

Q. Would you say that they were beneficial as a supplement to diet?

336 A. As I testified yesterday, I would say in the sense that a patient would be given a false sense of security and would stay on a food faddist diet and stay on an inadequate diet, that they were not adequately protected.

Q. Now, assuming that a person does not want to consult a physician—

A. That is his or her privilege.

Q. —and bought these Kordel products, would they injure them in any way?

A. If they refused to consult medical care or lacked proper medical care, and believed all the stuff in here as it was promised, if you take these preparations, I think that might occur. I remember one instance, I forget now the preparation, the Cetab is recommended for diabetes. Now, a person may have—

Q. Who recommended that for diabetes?

A. This stuff here.

Q. Find that part.

A. That was in the testimony yesterday.

Q. Who recommended it?

A. That was in the testimony yesterday, "It acts like insulin."

Mr. Eardley: Doctor, had you finished your answer before you were interrupted?

337 The Witness: No, I had not finished the answer.

Mr. Breen: I thought you had.

The Witness: This particular tablet, the Vitamin C, acting like insulin, was sugar coated

By Mr. Breen:

Q. Tell me if the products in themselves are harmful.

A. The products in themselves. I don't understand that.

Q. Well, would the ingredients in any of these products be harmful to anybody?

Mr. Eardley: I object to that, immaterial.

The Court: He may answer.

The Witness: Well, these products, as I testified yester-

day, may well be harmful when used in certain conditions. The condition of acidosis, for example, when the time element is necessary to get the patient to the hospital and for the patient to get good treatment for acidosis, and not use these products. In that sense, I would say that they are harmful in acidosis and diabetes, and in most conditions where no diagnosis or physical examination has been made and when it is not known what sort or type of the condition the patient is dealing with.

By Mr. Breen:

Q. If that person would not take a vitamin and still
338 neglected to go to a doctor, wouldn't there be the same result?

A. Yes.

Q. Isn't it true, Doctor, that many patients have gone to doctors and did not get any results?

Mr. Eardley: I object to that—

By Mr. Breen:

Q. And then in desperation they started to take vitamins and were benefited?

Mr. Eardley: I object, immaterial.

The Court: Sustained.

By Mr. Breen:

Q. Doctor, would you say that the entire range of all healing schools is open to controversy and each school of healing is entitled to its own theories, just as the practice of medicine is entitled to its own theories?

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

By Mr. Breen:

Q. Are you a member of the American Medical Association, Doctor?

A. For the second time, yes.

Q. Are you prejudiced against anyone who makes a
339 living by selling products for self medication?

Mr. Eardley: I object, immaterial.

The Court: Sustained.

By Mr. Breen:

Q. Are you in sympathy, Doctor, with the native cure group, men that rely on vitamins and herbs in treating diseases?

Mr. Eardley: I object, immaterial.

By Mr. Breen:

Q. And the statement credited to the late Lord George, "Doctors are always changing their opinions, they are always looking for some new fad."

Mr. Eardley: I object, immaterial.

By Mr. Breen:

Q. You did not subject these products to any test of any kind, did you, Doctor?

A. No, not these particular products. I have used some of the ingredients, however, not in connection with this but in my own practice.

Q. Doctor, have you become prejudiced against these products as a result of something you read in Exhibit 10?

Mr. Eardley: I object, immaterial.

The Court: Overruled.

The Witness: Will you state that again, please?

340 A. Definitely.

By Mr. Breen:

Q. What?

A. Definitely. As a member of the Medical Association, we are all urged to prescribe medicines by distinct entities and by the name of that particular medicine and not by any proprietary product or some other—

Q. You do not think—

The Court: Wait until the witness has answered.

Mr. Breen: Keep your voice up.

The Witness: I will try to.

As members of the Medical Association, we are urged to treat and use specific drugs where possible and not proprietary medicines from any one drug house or another drug house; therefore, this would come under that category. If I wanted Vitamin C, I would never say to use this preparation; I would prescribe ascorbic acid in the amount I wished to use.

By Mr. Breen:

Q. You do not think that any person has a right to go and get any medicine they like without a doctor's prescription?

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

341 By Mr. Breen:

Q. Doctor, are you not inclined to be prejudiced in favor of the medical group against the other groups?

A. Oh, certainly, if the other groups had anything, you

know what would happen to it. We would adopt it and use it. We always have. We have borrowed from every science we can think of.

Q. Do you read the American Medical Journal?

A. Every week.

Q. Isn't it true, Doctor, that persons have obtained results in other fields where medical science has failed?

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

Mr. Breen: That is all.

Mr. Eardley: No further questions, Doctor.

The Court: You are excused.

(Witness excused.)

The Court: The Court will recess for ten minutes.

(Recess.)

Mr. Eardley: Dr. Vail, take the witness stand, please.

342 DR. DERRICK VAIL, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. State your name, please.

A. My name is Derrick Vail.

Q. Where do you live?

A. I live at 2450 Lake View Avenue, Chicago.

Q. You are a licensed physician, licensed to practice medicine and surgery in the state of Illinois?

A. That is right.

Q. Are you licensed to practice in any other states?

A. The State of Ohio.

Q. Doctor, what if any education did you have to prepare yourself for your profession?

A. I graduated from Yale with the degree of Bachelor of Arts in 1919. I graduated from Harvard Medical School in 1923, with the degree of Doctor of Medicine. I obtained a diploma in Ophthalmology from the Oxford University, England, in 1927.

Q. Subsequent to that time, did you serve an internship?

A. Yes, I served an ophthalmology regency in the Mass-

achusetts Eye and Ear Infirmary, Boston.

343 Q. After that, Doctor, did you specialize in any particular field?

A. I went to India in 1925 to do a number of ophthalmologic surgical operations, and returned to Cincinnati, Ohio, and practised ophthalmology from 1925 to 1942.

I then was taken into the Army in 1942 and was sent overseas the 1st of October, 1942, as senior consultant in ophthalmology in the European theater of operations. I was attached to General Hawley's staff. General Hawley was Chief Surgeon, and I was in charge of all the eye work for the United States Army Troops from 1942 until Christmas Day of 1944.

At the end of that time I returned to Washington and was made the Chief Consultant in Ophthalmology to the Surgeon General, serving in that position until I was discharged from the Army the 28th of July, 1945.

Q. What rank did you hold when you were discharged?

A. Colonel.

Q. What if any societies are you a member of, Doctor?

A. I am a member of the American Medical Association; a fellow of the American College of Surgeons; a member of the American Academy of Ophthalmology and Otolaryngology, and served on the Council of that organization.

I am a member of the Association for Research
344 in Ophthalmology, and served as trustee for that organization.

I am a member of the Oxford, England Ophthalmology Congress.

I was President and Vice President of the Section of Ophthalmology, Royal Society of Medicine of England.

A member of the American Ophthalmology Society.

A member of the American Board of Ophthalmology, charged with the responsibility of conducting examinations for candidates wishing to practice ophthalmology.

And some local societies such as the Cincinnati Academy of Medicine; Chicago Ophthalmology Society; Chicago Medical Society; Ohio State Medical Society; Illinois Medical Society.

And an honorary member of the Kansas City Eye, Ear, Nose & Throat Society.

I think that is about the list.

Q. Are there any special requirements for these various societies you have mentioned?

A. To be a fellow of the American College of Surgeons one has to submit to certain rules and regulations that I do not think are quite pertinent to describe in detail here; it would take too much time. The qualifications are 345 public and can be easily ascertained.

The Academy of Ophthalmology requires a member to have been examined by the American Board of Ophthalmology and successfully passing the examination and obtaining their certificate.

The American Ophthalmology Society requires the same qualifications.

Those are the main ones.

Q. Doctor, what if any publications have you written or associated yourself with?

A. I am editor in chief of the American Journal of Ophthalmology, one of the two outstanding ophthalmology journals in the United States.

I have contributed about 35 articles on ophthalmology subjects, not only to the Journal, not only to the American Journal of Ophthalmology but also to the archives of ophthalmology. The British Journal of Ophthalmology. The transactions of the Ophthalmology Royal Society of Medicine.

Q. What if any textbooks have you written, Doctor?

A. I have written no textbooks but at the moment I am in the process of revision of Dr. Sanford Gifford's well-known textbook "Therapeutics in Ophthalmology."

Q. Have you written any chapters in any textbooks?

346 A. I prepared an article that had to do with the policy of the treatment of the wounded in the war in Europe, in the Manual of Medical Therapy, which was the bible, so to speak, of the medical officers in the European theater.

Q. Are you engaged in the general practice of medicine now?

A. No, I have never engaged in the general practice of medicine. I have been a specialist in the diseases of the eye since my graduation from medical school.

Q. Are you specializing in that particular field at this present time?

A. Yes.

Q. Do you have an office here?

A. Yes.

Q. Are you associated with any schools at the present time?

A. I am a Professor of Ophthalmology and Head of the Department at Northwestern University Medical School. I was formerly Professor of Ophthalmology and Director of the Department in the College of Medicine of the University of Cincinnati.

Q. Doctor; at this time I will show you Government's Exhibit 10, Health Today; and Government's Exhibit 14, Ribotabs.

347 Doctor, assume a product which has been named Ribotabs and labeled: "Each tablet contains not less than 1,000 micrograms of riboflavin."

Assuming further, Doctor, "Directions: As a dietary supplement, 2 tablets supply the minimum daily adult requirement set by the United States Government. For Relief of Deficiency Conditions 3 or more tablets daily, as required."

Doctor, referring to Government's Exhibit 10, page 31: "Health Today," spring of 1945, column 1, paragraph 1, and keeping what already has been read to you in mind—

The Witness: Excuse me, what page was that?

Mr. Eardley: Page 31, Doctor.

The Witness: 31?

Mr. Eardley: Column 1.

The Witness: It does not go that far.

Mr. Eardley: It is the next to the last page.

The Witness: Oh yes, I see. I have it. O. K.

Mr. Eardley: Column 1, paragraph 1, Doctor.

The Witness: That is right.

Mr. Eardley: Keeping what has already been read to you in mind, and assuming further: "The vitamin essential for healthy eyes.

348 "A severe deficiency of Riboflavin may often result in nutritional cataracts."

Doctor, have you an opinion, based upon reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of any of the abovementioned conditions or diseases?

Mr. Breen: I object to the question as too limited.

The Court: Overruled.

A. Yes, I have.

By Mr. Eardley:

Q. What is your opinion, Doctor?

A. I think that the discussion or the reading of the material here is misleading.

Q. Why, Doctor?

A. For the reason that there are many other causes for the conditions described, besides the Riboflavin deficiency; some of which are exceedingly dangerous to one's vision, and unless the patient complaining of these symptoms would have the benefit of a careful ophthalmologic examination and the chance to have a good diagnosis, he may lose considerable valuable time which time is essential
349 for the proper treatment and care of his ocular disease.

For example, there is much ado in the discussion here about vascularization of the cornea as one of the results of riboflavin deficiency.

Now, what is meant by vascularization of the cornea presumably is a downgrowth of new growth of blood vessels into the cornea which is the external coating, the transparent external coating of the eye.

There are innumerable causes for downgrowth of the blood vessels. Syphilis is one of the most serious ones. The disease begins in many cases in children, particularly with a cloudiness of the cornea, ulceration of the cornea with deep and new growth of bloodvessels to such an extent that the cornea may be completely obscured by the vascularization and by scars of various forms.

Trachoma, which is a disease of the lids due to virus, presumably, will in its later stages result in vascularization of the cornea. Trachoma is an infectious disease, and self-medication of trachoma not only will do harm to the individual himself but, because it is an infectious disease, may expose the rest of the members of the family to the virus.

Ulcers of the cornea will produce vascularization as
350 an attempt by nature to heal the processes.

Now, all of these conditions are characterized by the development of new growth of blood vessels in the cornea.

It has been claimed in the past that riboflavin deficiency will do that same thing. As a matter of fact, in quoting

the authority of Dr. Sydenstricker, as described in the manual, I suppose we will call it—

Q. Refer to it as Exhibit 10.

A. As Exhibit 10. Dr. Sydenstricker in his first paper claimed that riboflavin in large doses would clear up the blood vessels of the cornea in the case of interstitial keratitis. I presume he meant that due to syphilis.

This created quite a furor in medical circles, ophthalmologic circles, particularly, and they set about immediately to counteract or at least to find out whether there was any truth to his statement, because Dr. Sydenstricker had a splendid reputation as an observer.

It was not so long before all the hospitals, not all but many of the hospitals treating diseases of the eye, were giving patients who had interstitial keratitis due to syphilis very large doses, much larger than has been described here, as a proper dose, for clearing the cornea, without the slightest effect in this particular disease. And, therefore, I am sure that Dr. Sydenstricker has changed his opinion; although I must say I have not seen his retraction in print.

At any rate, the investigation which was widespread on the use of riboflavin for this condition undoubtedly and without question showed that riboflavin would have no effect whatsoever in clearing the blood vessels in interstitial keratitis, and that is a fact that stands today.

In addition to this, there has been considerable literature about the new growth of blood vessels in the cornea as a result of riboflavin deficiency in other conditions besides that due to syphilis.

I became exceedingly interested in this subject when I was in Cincinnati as head of that particular department of the university, and it so happened that Dr. Spies, who was a well-known nutritional investigator at the Hillman Hospital of Birmingham, Alabama, requested me as head of the department to either come down myself and study these cases, or to delegate a member of my department to do so.

It was impossible for me to devote the amount of time that was necessary to do this work and I delegated Dr. Carl Asher, a member of the department, who spent two years in the Hillman Hospital, working with Dr. Spies.

Now, this was a unique opportunity to study these diseases from the ocular viewpoint, because here in one place in the South was collected a very large number of patients who were obviously suffering from well-marked nutritional diseases. Dr. Asher investigated these cases which were picked cases. Dr. Spies would bring into him for investigation those patients whom he knew to be deficient in vitamins, and Dr. Asher spent hours in study, using the most modern methods of examination, such as the slit-mate, which is an instrument that sees through a binocular microscope so that the bloodvessels as seen through the microscope are magnified perhaps 4 to 8 or 10 times. So the details of these individuals' eyes could be most thoroughly and competently studied by an expert.

As a result of Dr. Asher's study he returned to Cincinnati and further studies were done in collaboration with me in the eye clinic of the Cincinnati General Hospital. As a result of the studies a paper was written by Dr. Asher and myself in which we showed, to the best of our ability, that the condition of new growth of blood vessels in the cornea had very little if anything to do in any of these conditions with riboflavin deficiency or any other type of deficiency. This paper is a matter of record. It was published in the American Journal of Ophthalmology and I have a copy here.

Next—

By Mr. Bradley:

Q. Pardon me, Doctor, for interrupting. Is your name associated with that paper?

A. Yes, sir, as one of the joint authors.

Q. Continue.

A. The paper is called "Cornea Vascularization Problems, by Derrick Vail and K. W. Asher." It was published in the American Journal of Ophthalmology, Vol. 26, No. 10, October, 1943.

Q. Have there been any reprints of that paper, Doctor?

A. It has been reprinted as a reprint, not in other journals.

Being keenly interested in this particular phase of ophthalmologic science, because, if it were true that a simple diagnostic examination with a relatively simple instrument, would reveal to us at a glance whether a patient

had or had not riboflavin deficiency, the study was
354 further pursued by me when I was overseas as much
as I could devote time to it to amidst all of my other
duties.

A rather unique opportunity was presented in England during those years before D-Day when, as you all know, England suffered cruelly from malnutrition or at least minima nutrition, to examine a number of patients at Oxford University in association with the Professor of Ophthalmology, Ida Mann. She became very much interested in this phase, and having the opportunity to study these people who had a minimum of diet, worked more or less with me and other members of my group in the study of these patients. The individuals were chosen in the clinics who showed some dilatation or vascularization of the cornea and each one of those individuals was then subjected to a most careful examination.

The weeding out process began and at the end of the period of study only one patient out of some hundred, it was decided that only one patient out of about one hundred possibly had a riboflavin deficiency.

Now, this verified Dr. Asher's experience in the Hillman Hospital because only one patient out of a very large number examined in the two years mentioned, something like
711 patients, only one patient out of that large number,
355 showed a condition which improved, a condition of the eye characterized as vascularization and ulcer of the cornea, which improved with large doses, much larger than here described, of riboflavin; and even that case was a little suspect.

So one is driven to the conclusion that vascularization of the cornea could not be all due to riboflavin deficiency, and that doses of riboflavin, certainly in the dose described here, would in no manner of means cure the eye, dry up the blood vessels, or restore vision.

Q. All right, Doctor, again referring to Government's Exhibit No. 14, Ribotabs, and also Government Exhibit 10: Assuming further, Doctor, and having in mind the label that has been read to you in the previous question, I refer you to page 31 again, columns 1 and 2:

"Riboflavin found cure for a type of blindness. Blindness due to the formation of small blood vessels

in the cornea of the eye, responded quickly to the administration of riboflavin."

Doctor, have you an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of blindness?

Mr. Breen: I object Your Honor.

The Court: Overruled.

Mr. Breen: On the ground, nowhere in Exhibit 10 does it say our product will do that.

The Court: Overruled.

Mr. Breen: For the record, may it be understood the objection stands as to other witnesses?

The Court: Yes.

The Witness: Yes, I have an opinion.

By Mr. Bradley:

Q. What is your opinion, Doctor?

A. My opinion is exactly the same as I expressed a moment ago, that riboflavin no matter under what name and in small doses certainly, will have no effect whatsoever on the disappearance or contraction of the growth of newly formed capillaries in the cornea.

Q. Doctor, I now hand you Government's Exhibit 20. Doctor, assuming a product called Kordel-A, which you have just been handed, which consists of the label; and assuming further on the label it states as follows:

"Each Capsule Contains Not Less Than 25,000 U.S.P. Units Vitamin A Extracted."

And assuming further, the directions:

357 As a Vitamin A dietary supplement, one to two capsules weekly should prove sufficient. One Kordel-A capsule furnishes approximately 6 times the minimum daily adult requirement of Vitamin A."

And referring to Government's Exhibit 10, page 26, Health Today, Spring, 1945.

"Your eyesight failing? Maybe your diet is dimming your sight. Many people need more Vitamin 'A.'"

"The eye sight vitamin."

Doctor, referring again to page 26, paragraphs 1 through 8, there is a picture of a woman there, Doctor, holding her eyes.

Assuming further, Doctor:

"This woman suffers from Vitamin A starved eyes. Her eyes are unnaturally dry and her eyelids are red and swollen. She is blind in a dim light and when she is suddenly faced with a bright light, she cannot see for long moments. If Vitamin A is added to her diet, she will benefit immensely.

358 "You may have read in the newspapers that RAF flyers in England are being given Vitamin A foods and capsules for their eyes. In industrial plants in this country tests have proved the value of adding extra Vitamin A to the diets of workers whose work requires the matching of colors and Vitamin A relieved color blindness in one test by 50%.

"This pigment plays a very important part in the sharpness of your sight especially in the ability of your eyes to adapt from bright light to dim.

"He may at first only laugh"—

Mr. Breen: I object, your Honor, he should have read the whole of the paragraph. He skipped eight lines.

The Court: Will you read the balance of the eight lines?

Mr. Breen: Second paragraph and third paragraph.

By Mr. Eardley:

Q. (Reading):

359 "One of America's greatest nutritionists, recently wrote a very interesting article in a national magazine. We quote from this article: 'In the retina at the back of the eye, there is a substance called "visual purple." This pigment plays a very important part in the sharpness of your sight especially in the ability of your eye to adapt from bright light to dim.'"

Now, assuming further, Doctor:

"He may at first only laugh at himself when he stumbles over"—

Mr. Breen: Why don't you read it all?

By Mr. Eardley:

Q. "—his neighbor's feet—"

Mr. Breen: I object, your Honor. He is only reading part of the paragraph. He should read it all.

Mr. Eardley: Judge, we are not claiming that all of this is bad and under the Act we only show what parts of it are bad.

The Court: Counsel says that you do not understand it unless you read it in conjunction with the whole paragraph.

Mr. Eardley: If the witness doesn't understand, Judge, I wish he would tell you if he does not.

The Court: Read it for the benefit of the Court, so the Court will understand.

Mr. Eardley: I see.

"Q. Any one who habitually gets less Vitamin A (this scientist goes on to say) than he needs is bound, sooner or later, to pay the penalty in dangerously poor sight
360 in semi-darkness. He may at first only laugh at himself when he stumbles over his neighbor's feet as he enters a darkened theater. It is anything but a laughing matter, however, when a pair of Vitamin-A-starved eyes readjust too slowly after being dazzled by the light of a passing car and a crash results!"

Now, Doctor, still keeping what has been read to you in mind, and further:

"Investigators at Harvard and Columbia Universities have discovered that a great many apparently normal people suffer from this nutritional night blindness."

Assuming further, Doctor:

"A well-known newspaper medical writer, wrote recently in one of his daily health columns, 'Thousands of people who, whether they are aware of it or not, suffer from moderate deficiency in daily intake of Vitamin A, are more than normally sensitive to glare, if not obviously affected with night-blindness. Such persons commonly have other eye symptoms which are due to Vitamin A deficiency, notably dryness and irritation as though by dust and sand, and many have also
361 the characteristic dry, nutmeg grated skin, and more or less chronic gooseflesh-like rash which is sometimes mistaken for acne. Instead of wearing cheaters these people should supplement their regular diet with Vitamin A in adequate amount. Not synthetic carotene, but natural Vitamin A, say 50,000 International units daily for a month, two capsules each containing 25,000 units. This can do no possible harm in any case and is likely to improve general well being, and frequently corrects the eye trouble in the course of a few months.'"

Now, Doctor, assuming further:

"At the height of the Dust Bowl years, two litters of pigs on two widely separated Texas farms were born blind. The cause, scientifically proved at the Texas A. and M. College, holds a warning for all people.

"The warning is that if prospective mothers do not get adequate Vitamin A their babies are likely to have weak eyes. There probably will be nowhere any epidemic of blind babies for a reason the Texas experiments showed clearly. The defect will be more insidious, eyes imperfectly formed, resulting in poor vision in later life."

362 Doctor, with those facts in mind, have you an opinion, based upon a reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could affect a cure, mitigation or treatment of the things just mentioned?

A. Yes, I have.

Q. What is your opinion, Doctor?

A. My opinion is that Exhibit 10, page 26, is misleading and may even go so far as to be dangerously misleading.

There is no question in medical records that night blindness can be due to a deficiency of Vitamin A. Now, this is a very old observation and goes back to the fishing fleet of Newfoundland; whose, whose members or the people who did the fishing, found that their vision, poor after dark, could be improved by the eating of the livers from the codfish.

From that time on the clinical entity of night blindness due to Vitamin A deficiency is one that is thoroughly recognized, but the conditions of night blindness due to Vitamin A deficiency is of great rarity among our people, especially in this country, because our diets are not inadequate to the point where this deficiency will take place.

363 Now, it has been argued that granted the diet of the individual in the United States is adequate enough to prevent an out-and-out condition of night blindness as the result of vitamin deficiency may appear, there still may exist a large number of individuals whose diet is minimal. In other words, they may be getting enough Vitamin A in their diet to keep them from developing marked cases of Vitamin A deficiency night blindness but they are not get-

ting enough to give them some symptoms of night blindness.

Now, night blindness is a definite entity. In most cases there is a definite history of not seeing well after dark. That is a well-known observation. There are many other causes, and some of your more common causes of night blindness is the inability to see in the dark.

Some of these are congenital, such as a degenerative disease of retinitis pigmentation.

Others are a condition of disease of that part of the eye. For example, a patient has a hardening of the eyeball, or glaucoma may have as one of the early symptoms of the disease the stumbling around and crawling over people in the movies and stumbling over a myriad of things as

described here. And if he is aware of this literature 364 and would take the medication advised, he would lose in two months as described, he would lose irrevocably,

without any chance of recovery; valuable attention, if the condition had progressed to the point where he had just a small part of his vision left that two months delay might be enough to produce total, complete and hopeless blindness.

And the disease of the optic nerve known as atrophy of the optic nerve due to syphilis again, and the diabetic atrophy type of patient who becomes suddenly blind is an allergic but that is a rare condition. Such an individual will find that he is unable to see when the lights go dim.

There, again, self medication under the circumstances with a dose of Vitamin A, such as described in that exhibit, would result in a very dangerous delay in arriving at the proper diagnosis, and therefore, the proper treatment.

The condition, therefore, of night blindness, while it may be due to a Vitamin A deficiency, is very rarely encountered in our people here to the point where we can definitely make a diagnosis. And it is harmful to the patient himself to make his own diagnosis of his night vision, disturbance of his vision in the night, due to a vitamin 365 A deficiency when it is much more likely to be some other cause.

Q. Doctor, what if any training work did you do while you were in the service in regard to night blindness with

the RAF and with our own fliers over the European theater of war!

A. As senior consultant in ophthalmology in the European theater, I was invited by the consultant ophthalmologist of the Royal Air Force, Commander Livingstone, to visit his installations and to observe the work that was being done, and become acquainted with the medical officers in charge of the various studies that were under way, and become familiar with the work done not only in night aviation but also in other visual problems that had to do with flying.

I availed myself of the invitation and spent many hours with Air Commander Livingstone and his group in studying his investigations and in seeing actual cases of different ocular conditions.

Now, in the early days of the RAF when they realized, when England realized that she did not have enough trained pilots to carry them through a dangerous experience, they had to save their fighters for night fighting particularly, because the night fighter would be more or less protected by the darkness. And for the same reason the Germans would send over their bombing raids during the night because the bombers were more easily protected by the darkness.

Therefore, it was Air Commander Livingstone's responsibility to evaluate and to develop a technique, training methods and every possible form of medication by which to improve the night fighter's ability to see after dark.

Air Commander Livingstone, being more or less of the same persuasion as the rest of us, particularly in this day, that Vitamin A deficiency perhaps existed, in order to make a determination of it by one single test, insisted that these fliers take large doses of Vitamin A as a precautionary measure, not that the night fighters were deficient so far as could be determined in Vitamin A, but as a prophylaxis.

It was soon found out that some of these lads would not bother to take their vitamin capsule or eat the carrots that were prescribed for them, and they turned in just as good a score, and in some cases better because of their more or less independence, than the others who took the capsules regularly. That made Air Commander Livingstone

think that perhaps there was not as much to this Vitamin A deficiency condition as first believed, and he conducted some experiments giving some of the cadets in training for night flying harmless capsules with a fluid which was of no therapeutic benefit, and controlled experiments against the taking of the Vitamin A capsules.

In that series of cases Air Commander Livingstone found that there was no difference in the ability of these individuals to see after dark. In other words, those who took the Vitamin A capsules did not have any better night vision from all the tests that could be given, than those who took the placebo, which is the harmless nontherapeutic capsule.

This report was not published at that time, nor have I seen it in print since, because it was felt the information obtained might upset the fighters, some of them had great belief in the efficacy of the vitamin capsules, just like a great belief in perhaps a letter from their sweetheart which they would carry in their pocket, or some other talisman, and rather than take them off the Vitamin A the substance was continued and the fighters were given the Vitamin A capsules to take, and it was probably more from a psychological point of view than the actual therapeutic point of view.

368 These men were all thoroughly examined. Their eyes were normal. Their diet was better than the average English diet. They were the pampered thoroughbreds in their special work of night fighting. Instead of changing their diet, and so forth, it was still felt that the supplementary use of the Vitamin A capsule would continue their encouragement, and that is the only reason why the RAF continued to use the Vitamin A.

Our forces did not get into that particular problem overseas because we were not doing any night fighting; but the messes, the officers' messes in the air forces were encouraged to use the carrots for two reasons: One, they thought the carrots had a high mineral content and were nutritious otherwise; and then some other people liked carrots, and they persuaded the pilots to eat carrots to improve their vision, and they persuaded them to use them because they were good for them otherwise.

In addition to that, carrots were very easy to get; they

grew everywhere and anywhere, but there was a lot of boloney about carrots so far as eyesight was concerned.

Now, visual purple which has been described here is a substance, a fatty chemical substance back of the retina 369 of the eye. When the eye is exposed to bright light the visual purple subsides and when the person's eye is closed the visual purple regenerates.

Now, it has been found, it is true, that rats deprived of Vitamin A have a very deficient visual purple; and clever experiments were performed to demonstrate that fact. When the rats were deprived of Vitamin A they would have this deficient visual purple and then they would be given exceedingly large doses, as much as 100,000 to 150,000 units of Vitamin A, and the visual purple would regenerate.

Now, we do not know what visual purple is; it has not been completely analyzed. You can imagine the great difficulty in extracting visual purple; but there is evidence that when Vitamin A is deposited that the visual purple has some role in the photo-chemical reaction of the eye.

But I claim this exhibit is misleading, so far as visual purple is concerned, because I believe that our people in this country are getting enough of the Vitamin A even in a minima diet to satisfy the requirements, so to speak, of the retina for visual purple. At any rate, the use of Vitamin A for patients who have no evidence of the deficiency, is a redundant affair where we take some- 370 thing which actually is not required.

The Court: Pardon me, the Court will recess now until 2 o'clock.

(And thereupon, the court recessed to reconvene at 2 o'clock p. m. of the same day, Tuesday, March 19, 1946.)

371 DR. DERRICK VAIL, called as a witness on behalf of the Government, having previously sworn, resumed the stand and further testified as follows:

Direct Examination (Continued).

By Mr. Eardley:

Q. Doctor, have you Government's Exhibit 10 there?

A. No, I would like a copy.

372 Q. (Handing document to the witness) Doctor, again referring to Government's Exhibit 10, page 26, this was read to you in your hypothetical question this morning:

"The warning is that if prospective mothers do not get adequate Vitamin A their babies are likely to have weak eyes."

Will you comment, on that statement, Doctor?

A. I think the statement—

Mr. Breen: Why don't you read the whole paragraph? Let's have the whole paragraph.

Mr. Eardley: That was read this morning, Counsel. I am just referring to that particular page that was read to him this morning.

Mr. Breen: I think, your Honor, now it should be all read.

The Court: Counsel says it was read this morning.

Mr. Eardley: That is right, Judge, in the hypothetical question.

The Court: Do you recall the paragraph, Doctor?

The Witness: Yes, sir. In my opinion, the statement warning that pregnant women—that is she is deficient in Vitamin A that her children will suffer, is a misleading one and will produce and is designed, I think, to strike 373 some terror or perturbation into the potential mother's heart at any rate, and of course the—

Mr. Breen: I object to that conclusion, your Honor. It is not warranted by anything in that paragraph, and I move to strike it out.

The Court: Sustained. That invades the province of the Court.

The Witness: Requiring it then, there is so far as I know nothing in the literature with which I am acquainted, and I may say I have had a very broad experience with the literature in my position as Editor of the American Journal of Ophthalmology—

Mr. Breen: Will you keep your voice up?

The Witness: It is my opinion that there is nothing in the literature or in my personal experience to warrant the conclusion that a pregnant mother of American nativity and living in this country, eating the high standard of diet to which we are all accustomed, that could influence in any

way the unborn child so far as Vitamin deficiency is concerned.

I am not aware of ever seeing a child, either newborn or later in life, who had an ocular condition that I could diagnose as Vitamin A deficiency.

By Mr. Eardley:

374 Q. Doctor, referring to what was read to you this morning:

"Instead of wearing cheaters these people should supplement their regular diet with Vitamin A" in adequate amounts."

Have you an opinion as to that statement, Doctor?

A. Yes, I have.

Q. What is your opinion?

A. I assume here that the word "cheaters" is a slang term for glasses or spectacles. To my mind the statement that by the ingestion of Vitamin A one can avoid the need or the use of glasses, is not true. There is no evidence that a person suffering from refractive error, that is to say the need of glasses for either near-sightedness or far-sightedness or astigmatic ocular muscle, could avoid presbyopia, which is the need for glasses as one gets past 40, has anything to do with Vitamin A in any way whatsoever, and therefore the ingestion of Vitamin A will in no way void the need of an individual for glasses.

Mr. Eardley: You may cross examine.

375 *Cross Examination by Mr. Breen.*

Q. Doctor, isn't it true that Vitamin A often helps people?

A. In my statement before I said that Vitamin A is one of the ingredients of the diet and also can be supplemented by the use of the preparations of Vitamin A and are necessary or considered necessary for the well being—

Q. Isn't Vitamin A—well, go ahead.

A. I have finished.

Q. Isn't Vitamin A ever prescribed for persons with weak eyesight?

A. I think that Vitamin A is prescribed entirely too frequently.

Q. But it is prescribed very frequently, is it not?

A. It is prescribed frequently.

Q. Why do you conclude, Doctor, that the American diet is sufficient to provide vitamins?

A. Simply because as far as I know there has been no change except perhaps during the war period of rationing in our dietary habits from those of our forefathers.

Q. Why do physicians so frequently prescribe it?

A. I think because of two reasons; one is that it is 376 so easy to prescribe something for the patient without any particular scientific evidence, and, secondly, there is an available supply to the public.

Q. Does a physician ever prescribe Vitamin A without scientific evidence?

A. I am sure that is correct.

Q. Would you say that the Kordel Vitamin A would do any harm to anybody if a physician prescribed it?

Mr. Eardley: I object to that, immaterial.

The Court: He may answer.

A. Well, I am not familiar with what the effect of Kordel vitamins would have because I have never prescribed vitamins by any particular name. If there is some occasion for prescribing vitamins, Vitamin A or Vitamin C or whatever the vitamin may be, in doses required.

By Mr. Breen:

Q. Doctor, if you saw 75 communications from persons who had used Kordel Vitamin A, saying that in their opinion they were greatly benefited by it, would that have any effect on your opinion?

A. Not in the least.

Mr. Eardley: I object to that, immaterial.

The Court: He has answered.

377 Mr. Breen: That is all, Doctor.

(Witness excused.)

DR. ROBERT BRUCE MALCOLM, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name?

A. Robert Bruce Malcolm.

Q. What is your address?

A. Office or residence?

Q. Office.

A. 30 North Michigan Avenue.

Q. What is your business or occupation?

A. Surgeon.

Q. You are a licensed physician, licensed to practice medicine in the State of Illinois?

A. I am.

Q. Are you licensed to practice in any other state, Doctor?

A. No, not in any other state.

Q. Doctor, what if any education did you have to prepare yourself for this profession?

378 A. Well I went to the University of New Brunswick, New Brunswick, Canada, and graduated from the McGill University of Montreal in 1910. And then resident, Royal Victoria Hospital of Montreal, Canada for four years. I was in the Canadian Army for three years, and then came back to practice after the first war, and then I was teaching at the McGill University where I was a Demonstrator in Anatomy for eleven years; Demonstrator in Physiology for six years; Lecturer in Surgical Anatomy for five years; Attending Demonstrator in Surgery and Attending Associate Surgeon of the Montreal General Hospital until 1930, when I came to the University of Illinois in Chicago.

Since that time I have been Attending Surgeon to the Illinois Research Hospital and the University of Illinois; and Associate Professor of Surgery in the University of Illinois; Attending Surgeon to the Chief of the Surgical Service in the Illinois Masonic Hospital; Attending Surgeon to the Walther Memorial Hospital; Associate Surgeon to the St. Luke's Hospital; Consulting Surgeon to the Little Company of Mary Hospital here in Chicago.

Q. Doctor, do you do any teaching?

A. Yes, sir.

379 Q. Where do you teach?

A. University of Illinois.

Q. And do you teach students attending the University of Illinois Medical School?

A. I do.

Q. What courses do you teach them, Doctor?

A. Surgery.

Q. Doctor, have you published any articles or prepared any books in the work that you have just described?

A. I have published many articles. I have never written a book as yet.

Q. Where were these articles published?

A. In various journals of surgery, in the Clinical Journal of North America, and the Surgical Clinics of North America; the Canadian Medical Journal; and various publications such as that.

Q. What were some of these articles that you published, Doctor?

A. On tumors of the breast; abnormalities of the neck; hernia; recent advances in the treatment of hernia; tumors of the glands; and various things like that, all surgical problems.

Q. Were these all published in scientific magazines, Doctor?

380 A. Yes, sir.

Q. Doctor, I will show you Government's Exhibit No. 13-A and Government's Exhibit No. 10, which has already been identified.

Doctor, referring to Government's Exhibit No. 13A, and assuming, Doctor, a product called Ormotabs. Label: "Contains sarsaparilla root extract (4-1,) kelp, sassafras bark, papain, chlorophyll."

And assuming further, Doctor: "Directions: As a dietary supplement, for experimental use, two tablets provide approximately 200 per cent of the daily requirements for iodine, together with sarsaparilla root, sassafras bark, papain and 20 milligrams of chlorophyll."

Now, Doctor, referring to Government's Exhibit 10, which is Health Today, Page 8, Column 3, paragraph 1; and assume further, Doctor:

"Health Today, Spring 1945: The ailments treated ranged all the way from deep internal infections, such as peritonitis and brain ulcers"—

Mr. Breen: Where are you reading from?

Mr. Eardley: Page 8, Column 3, paragraph 1.

Mr. Breen: All right, I have got it.

381 By Mr. Eardley:

Q. "In case after case"—

Mr. Breen: I object, your Honor, without the whole paragraph being read. He has only read part of it.

The Court: Counsel should read the whole paragraph.
Mr. Eardley: All right, Judge.

By Mr. Eardley:

Q. "Since the early experiments with anemia, Chlorophyll has gone on piling up further honors for its health-giving qualities. American medical men, within the past year or so have reported on some 1,200 cases where Chlorophyll was successfully used. The ailments treated ranged all the way from deep internal infections, such as peritonitis and brain ulcers, to pyorrhea and skin disorders. In case after case, the doctors were able to write on the patient's record, 'Discharged as cured.'"

Now, Doctor, have you an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether or not such a product so used might or could be effective in the cure, mitigation, treatment or prevention of the diseases and conditions just mentioned?

A. I have.

382 Q. What is your opinion?

A. I do not see that there would be any value whatsoever in the conditions which you have named.

Q. Why, Doctor?

A. Because, in the first place, Chlorophyll is simply the presence of green substance in the vegetable. You can feed people vegetables several times a day and it won't be of any great value to cure such things as you have mentioned because that is in all our diets. It is ridiculous to me to make such a statement.

Chlorophyll, itself is a negative substance after it has been taken away from the plant and it loses all of its function after it has been taken away from the live plant.

Q. Doctor, what if any effect would this product have on peritonitis and brain ulcer?

A. In the first place, brain ulcer is a ridiculous statement. Man to have an ulcerated brain would have to have the top of his skull off and an ulceration there, which would be ridiculous for such a statement to be made.

Ulceration of the vessels of the brain is a possibility, but it is ridiculous to think that anything like this would
383 have any effect. In the first place, it would never be

absorbed and never get through the skull topography, that is directly to the brain, to be of any value.

Q. Doctor, what causes peritonitis?

A. Peritonitis is due to some infection of the peritoneal cavity. It is multiple. It could be due to a great many conditions. Usually it is bacterial infection that has to be introduced to the peritoneal cavity which is the body cavity of the abdomen. By that I mean it is the lining of the outside of the bowel that allows the movement of the bowel. If we did not have the peritoneal cavity our bowels would never move one way or the other. There has to be a membrane to allow the movement of the bowel.

If one has an involved peritoneal cavity with infection, that is called peritonitis and that is a very serious condition. It is due, first to some direct implantation of disease from the contents of the gastro-intestinal tract from the bowel and a breaking down into the peritoneal cavity setting up an inflammation. If that is not remedied very quickly it is almost certain death, and that is called generalized peritonitis.

Then peritonitis may occur by transudation of bacteria that passes directly through the wall of the bowel causing inflammation of the peritoneal cavity. Or it may enter in the female by the congenital organs, and the peritonitis usually seen there is what is called a gastro infection coming from the vagina through the uterus and through the tubes, what is called pelvic peritonitis, but pelvic peritonitis, while dangerous, is not as dangerous as peritonitis caused by any rupture or perforation of the bowel.

Q. What if any effect would this product just described to you have on peritonitis?

A. It would have no effect whatsoever; it would not get near the focus of infection.

Q. Why, Doctor?

A. Because it would not be absorbed as such, and the materials that you say are present in this, would be destroyed by the gastric juice in the stomach and therefore would be of no value whatsoever, would not even be absorbed.

Q. Doctor, still referring to the same product—

A. That is the second?

Q. Ormotabs. No, this is another question, still referring to the same product—

A. Yes.

Q. And again referring to page 8 of Exhibit No. 10, 385 and assuming further, Doctor,

“Chlorophyll and varicose veins.

“Ulcerated varicose veins; osteomyelitis (a serious bone infection); acute infections of the nose, throat and ear; male and female urinary tract infections; empyema; fistula; deep abscesses; skin disorders; various types of wound infections—all were successfully treated with Chlorophyll. And Chlorophyll was found to be unusually valuable in treating chronic ulcers, especially those of the indolent varicose type.”

Doctor, with that in mind, have you an opinion, based upon reasonable medical certainty, and from your training education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of the above conditions?

A. I have.

Q. What is your opinion?

A. That it would be of no value whatsoever.

Q. Why, Doctor?

A. For the simple reason, that, as I said before, if it were taken by mouth it would be destroyed, and if it were used locally it would have no value because it has 386 no inherent value in itself.

Chlorophyll in itself used locally is a negative substance. You might as well use vegetable matter just the same way.

Q. What might cause ulcerated varicose veins?

A. That is due to a mechanical constriction of the veins of the leg caused by congestion of the veins themselves by the infiltration of the soft tissues by the stasis of the blood and then a breaking down due to malnutrition; and then probably a scratch or injury from without tearing through the skin which is a broken mechanism and since the skin has been torn there is then a secondary infection, and then the lack of repair promptly the breaking down causes the ulceration.

Q. What if any effect would this product, Ormotabs, have on ulcerated varicose veins?

A. No value whatsoever.

Q. Why Doctor?

A. Because it has nothing to do with it. If it is taken by mouth, in the first place, why it is destroyed.

Q. What is osteomyelitis?

A. Osteomyelitis is an infection of the marrow of the bone. To explain that we will have to get some idea of the bone. The bone consists of a shaft with two ends. 387 The shaft, the whole thing is covered by the periosteum to each end of the bone. Within that is the compact bone, and within that an inner portion that is called the medullary. So there is the protection of the periosteum and there is the covering of compact bone, and then the medullary. Inflammation of the medullary or central portion of a bone is osteomyelitis.

Q. What if any effect would this product, Ormotabs, have on osteomyelitis?

Mr. Breen: I object. There is no Ormotabs here.

The Court: What page are you referring to, Counsel?

Mr. Eardley: No. 8.

The Court: What paragraph?

Mr. Eardley: Paragraph 3. This is the product that the doctor has already identified.

The Witness: Yes, sir.

The Court: Have you found that, Mr. Breen?

Mr. Breen: No, I haven't found that at all.

The Court: Counsel will point it out to you.

Mr. Eardley: I might call counsel's attention to page 9, the bottom of the page where it reads: "Ormotabs."

Mr. Breen: But the article has no reference to Ormotabs at all. Page 8!

388 Mr. Eardley: I will ask counsel to refer to the last paragraph.

Mr. Breen: I have read that.

Mr. Eardley: It states in there, Ormotabs.

The Court: Read the portion that you want.

Mr. Eardley: "Lelord Kordel's Ormotabs contain 10 milligrams of highly concentrated Chlorophyll (and other ingredients). A box of 50 tablets is only \$2.00. (Use order blank on back page)."

The Court: That is on page 9 you are referring to?

Mr. Eardley: Yes.

Mr. Breen: But where on page 8 does it at all refer to any Ormotabs?

Mr. Eardley: This is a part of one article, Judge, on that particular page. It runs from 8 to 9, and there is a big ad at the top of page 9, the right-hand corner, "Ormotabs."

The Court: Oh yes. He may answer.

Mr. Bradley: Will you read that question, Mr. Reporter? (Question read.)

A. None whatsoever.

Q. Why, Doctor?

A. Because, as I said, it could not be used locally 389 and there is no value locally; it could not be taken, if taken by mouth it would be destroyed. It is of no value anyway.

Q. I will show you Government's Exhibit 16 now, Doctor. Doctor, assuming a product known as "Minerals. Chlorophyll-Plus and Vitamin D."

And assume further, Doctor: Label:

"Contains dicalcium phosphate, alfalfa, iron sulphate, irradiated yeast, potassium iodide, chlorophyll, sulphates of copper, cobalt, manganese, zinc, magnesium and nickel, magnesium trisilicate, lithium lactate, chlorides of sodium, potassium and strontium, sodium borate, sulphur, bismuth subnitrate, excipients to prepare."

And assuming further, Doctor:

"Six tablets daily furnish calcium 750 milligrams; phosphorus 580 milligrams; iron 30 milligrams; iodine 0.2 milligrams; copper 150 micrograms; Vitamin D 600 U.S.P. units; and chlorophyll 9 milligrams. Plus 1 milligram of each of the following: Manganese, cobalt, sodium, sulphur, potassium, chlorine—daily requirements for which have not been established. Magnesium, zinc, nickel, lithium, boron, strontium, silicon and bismuth."

390 Assuming further, Doctor:

"Directions: 6 tablets furnish the following percentages of the minimum daily adult requirements: Calcium, 100 per cent; phosphorus, 75 per cent; iron, 300 per cent; iodine, 200 per cent; Vitamin D, 150 per cent;"

Now, Doctor, referring to Government's Exhibit 10, Health Today, spring 1945, page 10, column 3, paragraph 2:

"Sodium. Of utmost importance in neutralizing acidity. Known for its dissolving action on stones. Prevent catarrh. Promotes good cheer and a clear brain. Regulates distribution of calcium—thus preventing arthritis, stiff joints, etc. 6 Minerals-Plus Tablets furnish 1 milligram of sodium."

Now, Doctor, do you have an opinion, based upon reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of any of the above-mentioned conditions?

A. The above-mentioned conditions? What are they?

Q. For its absorbing action on stones and good cheer?

391 A. Well, good cheer, alcohol will do that better than anything else I know. And as to absorbing stones, that is something that has never been done except by direct contact in the bladder and then we would have to do that a good many times. It is ridiculous. And there is nothing known to the medical profession that will dissolve stones in the gall bladder or anything else in the kidneys.

Q. What causes stones, Doctor, do you know?

A. Well, we know, there are so many different types of stones.

Q. Well, first, kidney stones?

A. For example, kidney stones—of course, the urine contains certain salts. There are calcium salts, and there may be sodium salts but mostly calcium. And phosphates. And they precipitate, and when there is not enough water properly in solution and because of these various things you get uric crystals and those things do not go into solution, and then they are precipitated and then the stone will form just by the precipitation of the salt; and then when that precipitation occurs then there is a building up of all the excess calcium, sodium, phosphate and everything else which is present in the urine which is coming from
392 the kidney. Then this simply makes layer upon layer until you have the large stones I mentioned that are present.

Q. Doctor, have you an opinion whether this product, Minerals-Plus, would promote good cheer and a clear brain?

A. Well, that is so ridiculous I don't want to answer that.

Q. Now, Doctor, still keeping in mind the product, Minerals-Plus; and assuming further including its label; and assuming further, now referring to page 10, column 2, paragraph 3:

"Boron

"Abnormal growth of certain cells in plant cells, so sudden as to be almost explosive, is caused when the plant is starved for Boron. The wild growth of some of the cells crowd others aside and disrupts the life processes. 6 Minerals-Plus Tablets furnish 1 milligram of Boron."

A. That is the cells of cancer, I think it means, apparently are there. That is possible. I think that is something marvelous, but I cannot believe it.

Q. Doctor, will this product do that?

A. I would say most emphatically no because, after all, a growing cell is something like a tumor formation. It seems to me ridiculous that anything like this, boric acid, or boron, would have such an effect. Here you have the cancer solution right here, if it is true.

Q. Doctor, in your opinion do you think it is true?

A. Of course not.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. Doctor, do you read the American Journal of Surgery?

A. I do.

Q. Did you read the edition of July, 1940?

A. I haven't read that exact article but I have seen a resume of it.

Mr. Breen: I will ask to have this marked Defendant's Exhibit 2, for identification.

(Said document was marked Defendant's Exhibit 2, for identification.)

By Mr. Breen:

Q. Doctor, I will ask you to look on page 171 of that article appearing in the July, 1940 edition.

A. Yes, sir.

Q. And read it.

394 A. "Last July"—

Mr. Eardley: Just a minute. I am going to make an objection there. I do not think the doctor should be confined to one page of the article.

Mr. Breen: Well, he can read the whole article.

Mr. Eardley: Is the whole article there?

Mr. Breen: The whole article, if he wants to. He can read the whole article if he likes.

The Witness: "Last July"—Do you mean for me to read this?

Mr. Breen: Yes.

The Witness: I mean out loud?

Mr. Breen: No, you don't have to, unless you want to.

The Witness: Oh, well, there is something I would like to read out loud:

"Some 120 cases ranging from deep internal infections, like peritonitis and brain ulcers, pyorrhea, skin disorders, have been treated in the document. And those patients discharged as cured."

Like peritonitis; what do you mean by "like peritonitis"?

By Mr. Breen:

395 Q. I am showing you that article as it appeared in the American Journal of Surgery.

A. Surely that is possible, lots of things get into the American Journal of Surgery, and the other journals, which are later refuted, and it says here—is this chlorophyll given topographically or internally? Which?

Q. Did you read the article I have handed to you, the article there?

A. I asked you, was it given topographically, do you know, topographically or just locally? How can it have application to a brain ulcer?

Q. I don't know, Sir.

A. I don't either.

Q. What does the article say?

A. It says here, 120 cases ranging from that—I must say this is most unscientific.

Q. Yes.

A. To be scientific you have to make a definite statement of definite findings in a definite pathological picture. This is so general it amounts to nothing.

Q. That is a magazine of general circulation, is it not?

A. It is to a certain extent, yes.

Q. A lot of laymen read it as well as doctors?

396 A. If they do they would not understand what they are reading about because even a doctor would not understand.

Q. Didn't the doctors understand?

A. No, I don't think they did, because the statement is here, "like peritonitis." That doesn't mean a thing, nothing, because it could be, it might be or it might not. And this particular sentence just is not, just like the old song, "Is you ain't or is you" something else.

Q. There have been conflicts in medical information?

A. Naturally, that is the only way we can ever progress.

Q. Sure.

A. Here we are in conflict.

Q. I see.

A. In my information that I have in my qualifications I take the articles for what they are worth; take them for what they are worth.

Q. If a layman read that article, would you find fault, any particular fault in quoting that part of it?

Mr. Eardley: I object, immaterial.

The Court: Sustained.

Mr. Breen: That is all, Doctor.

The Witness: Thank you, Sir.

(Witness excused.)

397 DR. FRANCIS L. LEDERER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. Will you state your name, please?

A. Francis L. Lederer.

Q. Where do you live?

A. Chicago, Illinois, 257 East Delaware Place.

Q. You are a licensed physician, licensed to practice medicine and surgery in the State of Illinois?

A. I am.

Q. Doctor, what if any education did you have to prepare yourself for your profession?

A. I was educated in the grammar schools of this state, graduating from the Nicholas Senn High School. I got



my Bachelor's degree from the University of Chicago; my M. D. from Rush Medical College. I was licensed in this state in 1921.

Q. After you received your M. D. degree, did you serve a period of internship in any hospital?

A. I did.

Q. Where did you serve your internship?

A. North Chicago Hospital.

398 Q. Did you pursue the practice of medicine after you completed your internship?

A. I took a residency in eye, ear, nose and throat, and then I went abroad for postgraduate training in the year of 1925.

Q. Where did you study when you were abroad, Doctor?

A. I studied medicine in Vienna, in Paris, Prague and Budapest.

Q. Do you specialize in any particular field of medicine at this particular time?

A. I do. Eye, ear, nose and throat, and in bronchoscopy.

Q. Did you follow that specialty after you completed your training?

A. I did.

Q. Are you still practising that particular specialty at this particular time?

A. I am.

Q. What if any schools or colleges are you associated with, Doctor?

A. I am associated with the University of Illinois, College of Medicine.

Q. What do you do at that particular institution?

A. I am the professor, head of the Eye, Ear, Nose
399 and Throat Department in that institution.

Q. What are the requirements for a professorship at the University of Illinois Medical School?

A. I do not believe that there are any definite qualifications that are set forth other than it is given on the basis of merit and tendency for creative investigations, contributions, contributions to literature, and perhaps prominence in the specialty in this country.

Q. Do you belong to any Boards in your specialty?

A. I am certified before the American Board of

Otolaryngology, which is a special board on the eye, ear, nose and throat.

Q. Are there any particular requirements necessary to become a member of that board?

A. Yes. They have both a practical and written examination and they demand a background of basic education, as well as five years, at least five years qualified practice under careful supervision.

Q. Do you hold any fellowships, Doctor?

A. I am a fellow of the American College of Surgeons; a fellow of the American College of Chest Physicians.

Q. Are you a member of any societies or associations, Doctor?

A. Perhaps all of the general medical societies, including the American Medical Association, the Illinois State, Chicago Medical Society, Chicago Pathological Society, the Military Surgeons Association of America; the American Broncho-esophagological Association, which is an association of specialists who pursue the specialty of putting tubes down in the esophagus, that is the tract, and into the lung.

I am also a member of the American Otorhenolaryngological Society and Laryngological Society, as well as the American Academy of and Otolaryngology; and I think a few others.

Q. What if any hospitals are you associated with, Doctor?

A. I am associated with the Michael Reese Hospital, the Grant Hospital, the Augustana Hospital, St. Mary's, Mt. Sinai, the Research & Educational Hospital, and the Illinois Eye & Ear Infirmary.

Q. What particular work did you do during the years 1942 to 1946?

A. That was the period in which I served in the United States Navy Medical Corp.

Q. What rank did you hold?

A. I was a Captain in the Medical Reserve of the United States Navy.

401 Q. What did your work consist of essentially, Doctor?

A. I was chief of the eye, ear, nose and throat service at the Naval Hospital in Philadelphia except for an in-

terval that I served in China where I organized with another colleague a teaching program for teaching the Chinese Medical School graduates to be medical subordinates, because the Chinese Army only had eleven hundred doctors and they were far short of their needs.

Q. What if any publications have you completed, Doctor, in your medical training?

A. I have numerous articles in the specialty to a number of about ninety. I have a textbook of eye, ear, nose and throat diseases that has been accepted as the official text of the Army and Navy, as well as in some 53 medical schools in this country, and numerous schools abroad.

Then I have another smaller text that is meant for undergraduate students, also on the diseases of the eye, ear, nose and throat. And I have numerous contributions to various publications dealing with my specialty.

Q. What if any citations have you received for your work, Doctor?

402 A. You mean in a civilian capacity or military?

Q. Both, Doctor.

A. In the civilian capacity, I am an honorary member of the Alpha Omega Alpha, that is the honorary medical fraternity comparable to Phi Beta Kappa in undergraduate schools. I am a member of Sigma Xi, which is the honorary society of the research group.

In the Navy I was cited for my work with the hard of hearing and the blind where I had occasion to organize the program for the Navy in the rehabilitation of the blind and the deaf personnel of the Marines, Coast Guard and Navy.

Q. Doctor, I will show you Government's Exhibit No. 13A, which is a product known as Ormotabs, and the label: "Contains Sarsaparilla root extract (4-1), kelp, sassafras bark, papain, chlorophyll and excipients."

Assuming further, Doctor:

"Direction: As a dietary supplement, for experimental use, two tablets provide approximately 200 per cent of the daily adult requirements for iodine, together
403 with sarsaparilla root, sassafras bark, papain and 20 milligrams of chlorophyll."

Now, Doctor, referring to Government's Exhibit No.

10, Health Today, Spring 1945, and assuming further, Doctor, referring to Page 8, Column 3, Paragraph 2:

"Chlorophyll and varicose veins.

"Ulcerated varicose veins: osteomyelitis (a serious bone infection); acute infections of the nose, throat and ear; male and female urinary tract infections; empyema; fistula; deep abscesses; skin disorders; various types of wound infections—all were successfully treated with Chlorophyll. And Chlorophyll was found to be unusually valuable in treating chronic ulcers, especially those of the indolent, varicose type."

Doctor, have you an opinion, bearing in mind what I have just mentioned, have you an opinion based upon reasonable medical certainty and from your training, education and experience, as to whether or not such a product so used might be or could be effective in the cure, mitigation, treatment and prevention of a condition known as osteomyelitis?

A. Of course—

Q. Do you have an opinion, Doctor?

A. Pardon?

404 Q. Do you have an opinion?

A. I have a very definite opinion.

Q. What is your opinion?

A. It is necessary to qualify here actually what osteomyelitis is. If any material is taken by mouth to affect a pathological process which is encased in bone, osteomyelitis of the skull, for example, following a sinus infection, because I notice here it talks of sinus infection, is one of the most devastating types of diseases that is known to our specialty. It is like a forest fire that is always one step ahead of those who are trying to combat it.

Osteomyelitis is usually a blood-borne disease in that the blood vessels carry little thrombi or small clot-like elements that plug up the blood vessels and prevent the proper nutrition from getting to the bone. That is one of the outstanding reasons why any form of medication is so futile in osteomyelitis, because the blood vessels are blocked and it does not reach the proper area of infection.

Osteomyelitis begins as an inflammation of the covering of the bone. Then it involves the deeper structures in an

inflammation that is called osteitis and then the bone begins to break down, and there is no type of medication 405 that reaches such areas. As a matter of fact, it is of interest to know that when an infection becomes encased in a bone it has been definitely demonstrated that staphylococci, a form of organism, has remained dormant some forty years, and so it gives one an idea of how futile medication is that might be used with such a condition.

Q. Doctor, what are some of the causes of infection of the ear, nose and throat?

A. This is a vast subject in which one should divide the conditions into three main groups.

There are the bacterial infections; there are infections due to a virus, and this is a difficult organism that just filters through a fine filter paper that are demonstrable under a microscope like the staphylococcus and streptococcus in this organism. Then there is a third in which the allergy enters. The inflammation is perhaps due to a deficiency on the part of the tissues to deal with infections due to its virulent potency and its power, and secondly, due to the fact that the virus cannot combat it because it is sort of knocked out, as it were.

And next, for example, there are little hair-like cells that act protectively and in inflammation those little 406 hair cells are paralyzed actually and later on have been destroyed, and that interferes with the local resistance of the tissue. And later on the inflammation may spread into the underlying tissues, which may be the soft tissues as well as the bone.

And then one must remember and bear in mind that the nose, throat and ear have a rather rich vascular setup, that they are pretty well supplied with blood vessels and lymph channels, and these blood vessels and lymph channels can carry infection into the glands; for example, from the throat into the neck, or into the body in general, and cause complications of a rather severe nature.

Does that answer your question?

Q. Doctor, have you an opinion as to whether or not this product that has just been mentioned would have any effect to relieve or mitigate acute infection of the nose, throat, and ear?

A. I have.

Q. What is your opinion, Doctor?

A. My opinion is that anything taken by mouth, and that covers, that is such an ambiguous term, as osteomyelitis there are many forms of osteomyelitis, depending upon what organism there is at the basis of it, and 407 any disease that is that ambiguous has to be called an acute infection of the nose, throat and ear because those acute infections could also include diphtheria, and would also include erysipelas, streptococcus, and this acute infection could even be due to tuberculosis. Those infections can also be due to encapsulated organisms in the streptococcus, and pneumococcus type 3 is another organism, and B-coli, which is an organism that does not even respond to heat in the test tube and it is very difficult to destroy.

So, therefore, I would definitely say that no medication, especially as has been set forth in this product, would be capable of combating infections such as I have briefly enumerated for you.

Q. Doctor, keeping in mind the product Ormotabs and its direction; and assuming further, Doctor, now referring again to page 8, Column 3:

"Useful in Sinus Infections.

"But perhaps the most spectacular results obtained from the use of Chlorophyll occurred in the treatment of chronic sinus infections and head colds. Every one of 1,000 cases of respiratory infections (sinusitis, rhinitis, head colds, etc.) when treated with Chlorophyll 408 was either cured completely or greatly relieved. Some sufferers reported immediate relief; and numerous common colds were cured completely within 24 hours. What blessing Chlorophyll can be to winter's millions of sneezing, coughing victims who drag through the days too ill, too miserable to do anything but 'just wait until the cold runs its course.'"

Now, Doctor, having that in mind, having the product in mind, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience as to whether or not a product so used, might or could be effective in the cure, mitigation, treatment or prevention of any of the above-mentioned conditions?

A. I have.

Q. What is your opinion, Doctor?

A. I believe it is necessary that we understand that the term "head cold" is a very loosely applied term. I would dislike very much to have anyone subject me to a delay of hours or days in advising me to use a remedial agent that would carry me on and give me a breath, so to speak, until certain complications could occur.

For example, in this age of so-called miracle drugs like penicillin, and streptococcolysin, it has been definitely shown that head colds and the sinuses do not respond.

Now, the reason for that is quite clear. You not only have a bacterial situation to remedy but you have a mechanical one, because the secretion, call it pus because it is pus, becomes so hard it becomes difficult to suppurate, becomes locked up in the cavities.

Now, unfortunately, and beside the point here, these cavities that we call the sinuses have outlets from them which are very small. If you can picture a cavity that has only an outlet the size of the lead of a lead pencil, and a small lead pencil, then you can readily understand how any inflammation which carries with it a dilatation or expansion of the blood vessels, and consequently a swelling of the tissues and a blocking of the small channels, locking up the pus in a cavity, you can well understand that any administration, either by mouth or through the veins or through the rectum or through the muscles, will not be effective until you have given the nose a mechanical opportunity to ventilate and drain.

Therefore, I can say, without any doubt, that I would be unwilling to subject any patient having a so-called head cold, which is again a very ambiguous term, and furthermore this 1,000 cases is most interesting, but granted it would be, from any form of medical literature I would discount sixty per cent for goodwill on the part of the author. It is hardly possible in the experience of a lifetime in ear, nose and throat, to envision 1,000 cases, whether consecutive or selective, that responded in 24 hours to any product of any kind, because by the very basis of what we know of inflammation, that inflammation takes more than 24 hours to subside, because under the microscope you can observe changes going on in the tissues that consists of what we call round cells infiltration of immune substances, such as leucocytes and so on, which gather there

as nature's way of taking care of infection, and that takes more than 24 hours.

So there is misrepresentation on the part of anybody who says that a cold will clear up in 24 hours. Furthermore, the word cold in itself is a very ambiguous term and it does not clarify the condition.

And besides that, what is back of my mind in all this, is the certain lapse of time which subjects the patient to the possibility of such delay that it may be harmful and complications may set in whereby anybody coming along will say: "Too bad I did not see you 24 hours ago."

The Court: The Court will recess for ten minutes.

(Recess.)

By Mr. Eardley:

Q. Doctor, I will show you Government's Exhibit 16. Assuming a product called Minerals-Plus. Chlorophyll and Vitamin D.

And assuming further, Doctor:

"Label: Contains dicalcium phosphate, alfalfa, iron sulphate, irradiated yeast, potassium iodide, chlorophyll, sulphates of copper, cobalt, manganese, zinc, magnesium and nickel, magnesium trisilicate, lithium lactate, chlorides of sodium, potassium and strontium, sodium borate, sulphur, bismuth, subnitrate, excipients to prepare."

Assuming further, Doctor:

"Six tablets daily furnish calcium 750 milligrams; phosphorus 580 milligrams; iron, 30 milligrams; iodine, 0.2 milligrams; copper, 150 micrograms;; Vitamin C, 600 U.S.P. units; Chlorophyll, 9 milligrams.

412 "Plus 1 milligram of each of the following: Manganese, cobalt, sodium, sulphur, potassium, chlorine—daily requirements for which have not been established—plus: Magnesium, zinc, nickel, lithium, coron, strontium, silicon and bismuth—the exact need for which in human nutrition has not been established.

"Directions: 6 tablets furnish the following percentages of the minimum daily adult requirements: Calcium, 100 per cent; phosphorus, 75 per cent; iron, 300 per cent; iodine, 200 per cent; Vitamin D, 150 per cent."

Doctor, with that in mind and referring to Government's

Exhibit No. 10, page 10, column 1, paragraph 3 in "Health Today, Spring 1945":

"SILICON

"Essential in growth of teeth and nails. Improves hearing. Immunizes against serious maladies. Builds resistance to tooth decay. Brightens eyesight, improves memory. Keeps skin from becoming flabby. 6 Minerals-Plus Tablets furnish 1 milligram of Silicon."

Now, Doctor, keeping that in mind, do you have an opinion based upon a reasonable medical certainty and 413 from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of a condition of the hearing?

A. I have.

Q. What is your opinion, Doctor?

A. I believe I am particularly fortunate, coming out of a situation where I had 3,200 boys and girls who were hard of hearing, 3,200 consecutive cases of hard of hearing individuals. It is necessary for you to keep in your thoughts just what a hard of hearing person is.

There are many causes for a person being hard of hearing. He may have congenital deafness; that is, he has inherited certain qualities which prevent the hearing mechanism from even developing. I am sure that everyone has seen children who have been born without an arm. The same thing occurs in the ear. One may be born without a certain component part of the ear. That person is hard of hearing. We say he is congenitally hard of hearing.

Some people are hard of hearing by heredity. We call that disease otosclerosis. That disease also causes a person to be hard of hearing, and usually occurs in the 414 female about six to one in relation to that in man.

It occurs in families and that disease is usually transmitted from one generation to another.

Then there is a type with which most people are familiar, commonly alluded to as boilermaker's deafness in which a person exposed to loud noises over a period of time becomes hard of hearing.

In the war we experienced single salvos, particularly surprise fire, from 3, 5 and 16-inch guns in particular, that causes a person to lose his hearing.

Then we have a person who may be hard of hearing due to an injury. A fall or a blow causing a skull fracture.

Then we have other forms of deafness that are due to syphilis, due to tumors of the brain, et cetera.

I tell you these causes mainly to show you the danger of using the all-inclusive term "this person is hard of hearing." It is meaningless. And if you understood the anatomical structures of the nerve encased in heavy bone, quite a ways even from surgical approach and very difficult to get to even on the dissecting table, then you have in mind the illegitimate thought that any form of oral medication would reach that particular nerve.

We must also assume on the basis of the causes that I have given you that not all deafness is the same. It would be dangerous, therefore, for obvious reasons, to give a person medication where a continuance of the deafness would lead to years of diminution of hearing because valuable time would be lost and he would become so hard of hearing that it would be impossible to even attempt to restore it.

I also would like to call attention to the fact that this remedy, silicon, if one would even grant that there is the least absorption into the system, which I doubt very much because most of this will pass through the gastro-intestinal tract without being absorbed, but granted that we get silicon through it would only increase the mineral deposit which is the very thing that causes certain forms of deafness, making for a hardening of the bones, the ossicles, as we call them, in the middle ear.

I feel, therefore, without further ado, that I would very emphatically say that no hearing loss would be benefited by this combination of materials.

Q. Doctor, keeping in mind the product Mineral-Plus, with its label that was read to you in the previous 416 question; and now referring again to Page 10, Column 4, No. 1:

"IODINE

"The controlling mineral! Prevents goitre due to iodine deficiency; nervous breakdown. A high iodine reserve gives mental energy, originality, pep and self-confidence. Helps check tonsillitis, overweight, weak-

ness, etc. 6 Minerals-Plus Tablets furnish 0.2 milligrams of Iodine."

Now, Doctor, keeping that in mind, have you an opinion, based upon reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of tonsilitis?

A: I have.

Q. What is your opinion?

A. Here, again, the term "tonsilitis" needs explanation. Tonsilitis, of course, refers to the fact that you have a sore throat.

There are quite a number of conditions that can cause a sore throat. A person with pernicious anemia or with some blood disturbance can have a sore throat. A person with diphtheria can have tonsilitis. A person with a 417 milk borne type of infection that is associated with streptococcus and hemolactate may also have a sore throat. A person who has a membranous condition of the tonsils, which may be due even to tuberculosis or syphilis, will complain of a sore throat.

In other words, tonsilitis is a local manifestation, a local alarm, as it were, of a general disease in many instances. And the delaying of some time, whether it be hours or days, may be dangerous to the patient.

For instance, he may have an abscess commonly called quinsy sore throat, and that abscess would not respond to any form of medication taken in any manner, and would have to be evacuated; in other words, you would have to incise the abscess and let out the pus.

One must understand the structure of the tonsil. The tonsil is made up of many valleys; we call them crypts. In those crypts there is a collection of tissue that has been cast off and there is a collection of bacteria, and the bacteria, by the way, may be so virulent or powerful that they do not even respond to the intense rays of the x-ray, and many of these organisms cannot be destroyed un-418 less you also destroy the normal tissue. So it is impossible that this form of medication could affect that local condition of tonsilitis.

Besides that, I have had experience with the use of some of these combinations of substances and know full well

that they do not influence tonsillitis, even so-called simple sore throat.

Q. Doctor, I will show you Government's Exhibit No. 23. Assuming a product which is there identified as Government's Exhibit 23, called Niamin:

"Label: Each tablet contains not less than 10 milligrams of niacin (amide) yeast, and excipients to prepare.

"Adult directions. (As a supplement to the diet): One tablet per day at mealtimes."

Doctor, referring to Government's Exhibit No. 10, and assuming further Page 25, Column 1, Paragraph 4:

"NIACIN OFTEN RELIEVES HEADACHES."

"Promising results in the treatment of migraine headaches"—

The Witness: Excuse me, I do not follow you. You said Column 4 on Page 25.

Mr. Eardley: No.

419 Mr. Breen: Paragraph 4.

The Witness: Paragraph 4!

By Mr. Eardley:

Q. Column 1.

The Witness: Thank you.

By Mr. Eardley:

Q. "Promising results in the treatment of migraine headaches with niacin and similar encouraging results with the same vitamin in the treatment of another baffling disease known as Meniere's syndrome, characterized by severe spells of dizziness, ringing in the ears and deafness, were reported recently before the annual meeting of the American Medical Association by Dr. Miles Atkinson of New York City."

Doctor, with those things in mind—

Mr. Breen: Let's have the other paragraph read.

The Court: Read that also.

Mr. Eardley: May I ask a question on this one first?

Mr. Breen: I think he ought to read the whole paragraph to the Doctor, the next two paragraphs.

The Court: All right, read them first.

By Mr. Eardley:

Q. Assuming further, Doctor:

420 "Dr. Atkinson presented evidence indicating that both diseases were identical in so far as the mechanism

of their production is concerned. Both conditions, he finds, are due to a dysfunction of the blood vessels.

"What is even more important, he observed for the first time that there are two distinct groups in which the two diseases manifest themselves. In one group, he found, the symptoms are due to an allergy (sensitiveness) on the part of the patient to histamine (a powerful body chemical), or some other substance."

Doctor, having in mind—

Mr. Breen: The next two paragraphs should go in. They are short.

By Mr. Eardley:

Q. "In the second group the condition is the result of constriction of the blood vessels, resulting in periodic spasms in the vessels, with consequent ill effects either on the labyrinth of the ear (causing the dizziness in the Meniere's disease) or on certain regions in the brain (resulting in the severe headaches in migraine)."

Mr. Eardley: Is that far enough?

421 Mr. Breen: The next one.

By Mr. Eardley:

Q. "Dr. Atkinson stressed the point that the effect of niacin is not the result of the relief of a vitamin deficiency but is wholly due to its role as a dilator of the blood vessels. He further emphasized the necessity for the accurate grouping of the two types of cases."

Mr. Eardley: Is that far enough?

Mr. Breen: Yes.

By Mr. Eardley:

Q. Doctor, having that in mind, have you an opinion, based upon reasonable medical certainty and from your training, education and experience as to whether such a product so used, might be or could be effective in the cure, mitigation, treatment and prevention of the disease known as Meniere's?

Mr. Breen: I object. There is certainly no foundation for this interrogation.

The Court: What is the name of that disease?

Mr. Eardley: Meniere's.

The Court: What is that disease known as Meniere's?

The Witness: Sir, there is a name of a condition known

as Meniere's, but it is a misnomer. That is, there
422 is a tendency on the part of people to call every person
who is dizzy, Meniere's disease, to have Meniere's
disease.

Mr. Breen: Your Honor, this whole paragraph calls attention to what Dr. Atkinson said, and that is all. I say it is not binding on the defendant.

Mr. Eardley: The defendant has the right to bring Dr. Atkinson in his case.

The Court: You may answer.

A: The term "dizziness" is a very general term, and my questioning of this setting forth of this symptom is one that would excite my alarm because a person who is dizzy may be dizzy as a result of a brain tumor; he may have a headache from a brain tumor, too. He may be dizzy as the result of a tumor of the eighth nerve, which is the nerve of hearing and also controls our equilibrium. He also may be dizzy as a result of the morning after the night before, or some other systemic condition, whether it is due to toxic sources from other parts of the body. He also may be dizzy as a result of some eye disturbance, an imbalance of the muscles of the eye. In other words the term lacks definition.

Besides that, this term of Meniere's is one that I
423 have fought against for years. Here was a Frenchman
who observed one case in 1848. As a matter of fact,
the man he quotes here has written a recent article in 1945
in which he finds that Meniere described a case in 1848 and
described the same case in 1861, but in 1861 when he described it the patient was not dizzy and in 1861 the patient was dizzy.

Of course, I must add that the patient died in 1848, so Dr. Atkinson even questions the ambiguous term of Meniere's.

Now, as far as commenting about the use of this very material, let me say this, that Dr. Atkinson does not propose the use of Niamin or amid. He proposes the use of nicotinic acid. I must eliminate it, like somebody drinking a glass of water, it has absolutely no value.

Besides that, certain of these products that you state here can cause dilatation which would be very dangerous in older individuals because dilatation of a blood vessel that has lost its elasticity would be most dangerous.

The controversy concerning Meniere's case is this: Many physicians have translated the French into meaning that the young lady who was riding in the stagecoach, the
424 one that Meniere described on a very cold day suddenly fell to the deck, to the floor of the stagecoach, and she died within 24 hours. A post mortem examination revealed a sort of reddish substance in the internal ear, which we call the labyrinth of the ear. We do not know whether it was blood due to the fact that the young lady fell and may have struck her head or something of that sort.

So I would say, to describe dizziness as Meniere's disease is, firstly, out of place; and, secondly, would permit certain people with diseases that were dangerous of delay to drag on and be given a crutch so that there would be irreparable damage in this particular delay.

Furthermore, may I state, my own experience with this therapy has been absolutely valueless in controlled clinical experimentation? I would be the first to acknowledge and be very pleased to have a remedy that would give relief to an individual who actually had what is called a hypertrophy of the labyrinth, which is too much fluid in the ear, and which has been shown here in the post mortem examination. And I do not believe the matter is that well settled that one can go on record and say that this is such a marvelous remedy as Dr. Atkinson proposes.

425 I might say, furthermore, he has been also dealt with in the literature by other well known clinics, people who could not confirm his results. And I may say in Dr. Atkinson's defense that he too has not been able to confirm the results of other clinics.

As you know, statistics generally are not so valuable as one would imply. I always compare statistics to a lamp post for a drunken man; they may be valuable for support but certainly furnish no illumination.

By Mr. Eardley:

Q. Doctor, what did you mean when you referred to a crutch?

A. By that I mean a person who is dizzy and has an infection, because we know that infection from the ear or a blockage of the eustachian tube from a myriad of other diseases that have to do with the central nervous system, for example, and multiply circulatory syringomyelitis and some other diseases that would be familiar to

doctors, would cause a person to be dizzy and cause a degeneration of this nerve.

Now, the eighth central nerve has two parts; one for hearing and the other has to do with the mechanism that deals with our equilibrium, that makes us stand up-
426 right, that makes us know whether we are standing right side up or up side down, and this particular mechanism may be influenced by syphilis and in syphilis you can have dizziness; you can have dizziness in brain tumors, and the delay that I am implying here is the delay that would cause irreparable damage should one wait for the results of such medication.

Furthermore, it takes a mighty good otologist or ear specialist to ascertain whether a person is dizzy from the cause for which this remedy is offered.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. Have you made an analysis, Doctor, of these products?

A. None other than I have read the labels and am familiar with the ingredients.

Q. Have you subjected the products to any chemical tests?

A. I have not been asked to discuss that. I might say that there are other things—

Q. Do you know whether or not the products in and of themselves are harmless or harmful?

A. On a clinical ground, I would say they are harmful to the degree that, as I tried to point out to you,
427 delay in taking proper care of any illness, taking specific care of it, constitutes a danger to the patient; yes, sir.

Q. Do you know whether or not there is anything in these products that would be harmful to a person who takes them?

A. Now you are asking me about products. Are we discussing the whole line here, all of the items?

Q. The last three or four that were discussed by you?

Mr. Eardley: I object to the question unless it is specified.

A. I can take up some items specifically if you will point them out to me.

By Mr. Breen:

Q. Take the case of Minerals-Plus. Don't you agree that minerals are important to the diet?

A. In the American populace there is no demonstrable mineral deficiency. As a matter of fact, I had occasion to examine large groups of Chinese who certainly have no minerals. Their diet consists of two bowls of rice and a little cabbage. If they happen to be near a river they eat some fish. If they happen to have one of these porkers, a pig, they will have some fat, but otherwise not in their diet.

428 I did not observe but one case of rhinitis which is associated with a deficiency, and in a series of 500 Chinese that I carefully examined and controlled, I did not find but two cases where they had any ear infection.

The Chinese never complain of headaches but the Chinese do have difficulty with their eyes due to trachoma. If I were to compare 50 of them with an American cross-section, I would say that those people without minerals are in pretty darn good health.

Q. Don't you think that persons taking minerals-Plus supplement of diet would be benefited?

A. Psychologically, yes, sir, but not physically.

Q. Is that not very important?

A. The well being of a person does not depend upon what he eats but by the way he feels and the way he conducts himself and his experiences, and minerals have no relationship to the feeling of well being in an individual.

Q. Do you agree with the American nutritionist that minerals are important to diet?

A. I would like to assume that every American eats a balanced diet, but one only has to walk down Michigan
429 Avenue or any avenue in this city or any other, and watch the pretty healthy looking individuals and see what they eat. Therefore, I believe it is very much over-rated.

Mr. Breen: That is all, Doctor.
(Witness excused.)

DR. ISAAC SCHOUR, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name, please?

A. Isaac Schour.

Q. Keep your voice up so we can all hear you. Where do you live, Dr. Schour?

Mr. Breen: What is the name, Doctor? I cannot hear you.

The Witness: Isaac Schour. I live in Chicago.

By Mr. Eardley:

Q. Are you licensed to practice dentistry in the State of Illinois?

A. Yes, sir.

Q. What if any education did you have to prepare yourself for your profession?

430 A. I have a Bachelor of Science Degree from the University of Chicago, and Doctor of Dental Surgery from the University of Illinois; a Master of Science Degree in Oral Surgery from the University of Illinois, and a Doctor of Philosophy Degree in Anatomy from the University of Chicago, and a Doctor of Science Degree from the University of Washington.

Q. Are you affiliated with any schools at this particular time, Doctor?

A. I am head of the Department of Histology and professor of Histology at the University of Illinois College of Dentistry.

Q. How long have you held that position?

A. About fifteen years.

Q. Doctor, are you a member of any associations or societies?

A. Yes, sir.

Q. Will you name them for us, Doctor?

A. American Dental Association; International Association for Dental Research; Chicago Institute of Medicine; Society for Experimental Biology and Medicine; American Association of Anatomists; Society for Research in Child Development.

Q. Do you belong to any fraternities or societies?

431 A. I am a member of Sigma XI, Phi Beta Kappa. These are honorary scientific fraternities.

Q. Any other fraternities, Doctor?

A. The honorary dental fraternity of Omicron Kappa Upsilon.

Q. Doctor, have you written any textbooks of any kind?

A. I am co-author of two textbooks, one on Dental Histology and Embryology of the Teeth; and the other the Atlas of the Mouth.

Q. Have you helped to write any other chapters in any textbooks, Doctor?

A. I have participated in preparing chapters in five different textbooks.

Q. Are they in use in schools at the present time, Doctor?

A. They are.

Q. What if any publications have you published?

A. I have published over a hundred research reports.

Q. What do those reports consist of, Doctor?

A. They deal with experimental studies in tooth development, diet, nutrition, endochronology and dental diseases.

Q. Have you written any on children's diseases of the mouth?

432 A. I have helped in the preparation of a chapter on the teeth in a recent textbook, *Pediatrics*, by Mitchell & Nelson textbook.

Q. Doctor, have you received any special honors or recognition?

A. I have received special certificates for three different scientific exhibits shown before the American Medical Association in 1935, 1937 and, I believe, 1939.

Q. Doctor, have you been a member of any missions on specialized work?

A. I recently participated in the Italian Medical Nutrition Mission, in which I served as senior dentist. The purpose of this mission was to study the effect of the war upon malnutrition in Italy.

Q. When was this work done, Doctor?

A. This work started May, 1945 and I spent five months in Italy, and some of that work is still being continued.

Q. Were other people working with you on this Board?

A. Dr. Massler, who is my associate in the Department of Histology, has continued the work and spent an additional five months in Italy and he has just returned about three weeks ago.

Q. What particular title did you hold in this assignment?

433 A. I was senior dentist and stemologist.

Q. How many men were assigned to this mission, Doctor?

A. There were about twelve men on this mission, also

specialists in the following fields: In nutrition, in public health, in biochemistry, and internal medicine.

Q. While on this mission, did you still hold your professorship at the University of Illinois?

A. I was on leave of absence from the University of Illinois for this purpose.

Q. Doctor, I will show you Government's Exhibit 4A, for identification.

Doctor, assuming now a product known as Cetabs,—I should say, a product called Cetabs.

A. Pardon me, may I have this copy? I think it would be helpful.

Q. I am referring you to that exhibit there at this particular time, Doctor.

Doctor, assuming a product called Cetabs:

"Label: Each tablet contains not less than 600 U.S.P. units of Vitamin C (30 milligrams ascorbic acid) and necessary excipients."

Assuming further, Doctor:

"One tablet furnishes the full minimum daily adult 434 requirement for Vitamin C, which is 600 U.S.P. units."

Now, Doctor, referring to Government's Exhibit 10: "Health today, Spring of 1945," and up at the top of that page, Page 16, Doctor:

"Science explains why you need Vitamin C every day!"

"Do you want to age faster, or stay normally young?"

"Do you want sound teeth and gums?"

Mr. Eardley: May I call the Court's attention, that we are going to have this witness testify as to the gums?

And, Counsel, do you desire me to read all of this? This witness is a dentist and is just testifying here as to the gums.

Mr. Breen: It depends on what you are going to ask him.

Mr. Eardley: Teeth and gums, that is all.

Mr. Breen: Read everything about the teeth and gums, that is all.

Mr. Eardley: That is all there is.

Mr. Breen: Read what you want to read and I will see.

Mr. Eardley: I have read, "Do you want strong
435 teeth and gums?"

Mr. Breen: That is all right.

By Mr. Eardley:

Q. Now, Doctor, keeping that in mind, do you have an opinion based upon reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or relief of the condition of sound teeth and gums?

A. I have.

Q. What is your opinion, Doctor?

Mr. Breen: I want the objection for the record, your Honor.

The Court: The record will show the objection.

Mr. Breen: Yes, that is all right.

The Court: Overruled. Proceed.

A. Of course, everyone wants to have sound teeth and gums, in answer to this question; but taking a Vitamin C tablet a day is not going to give any assurance that a person is going to have sound teeth or gums.

Let us first talk about sound teeth. That, of course, covers a pretty broad statement. You may define sound teeth in many ways. I suppose the implication, first of all, is that when you do not have sound teeth you have teeth
436 that have tooth decay.

There is no evidence whatsoever that the taking of one Vitamin C tablet, or any number, will give any assurance to the person taking it that his teeth are not going to have any tooth decay, or that if he does have tooth decay that the tooth decay is going to stop and there is going to be any sort of healing.

As far as the gums are concerned, diseased gums are the result of multiple causes. The most common cause for diseased gums is the accumulation of food debris, bacteria, tartar around the teeth. This condition can be treated in only one way or, rather, two ways: First, by careful removal by a dentist; and, secondly, the proper care of the teeth in the interim by brushing by the patient.

No amount of Vitamin C is going to remove dirt, food debris, tartar, that accumulates around the necks of the teeth and causes a destruction of the soft tissues.

By Mr. Eardley:

Q. Doctor, still keeping in mind the Cetabs product, and now referring to Government's Exhibit 10, the bottom of the page:

"When Nature Warns!"

437 "If you catch 'one cold after another,' if you feel deep pain in your joints, if you black and blue easily, if your gums are soft and irritated, if cuts don't heal quickly, if you feel 'old and tired' then take warning. Consult your doctor immediately. And be sure to get plenty of Vitamin 'C' foods to supplement your diet with vitamin 'C' in concentrated form. These are all signs that your meals are not giving you even the bare minimum of 'C' necessary to health.

Now, Doctor, keeping that statement in mind, do you have an opinion, based upon reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of the condition described here, "gums are soft and irritated?"

A. Yes, sir.

Q. What is your opinion, Doctor?

A. I think if a person has gums that are soft and irritated, he should see the dentist. If the dentist has reason to believe that this patient should have additional Vitamin

C, then it is within the responsibility of the dentist
438 to prescribe it; but the fact is that in persons with soft and irritated gums, and conservatively speaking there would be less than one per cent of our populace showing soft and irritated gums, which condition is the result of a Vitamin C deficiency, even in such cases the treatment would depend not only on a proper Vitamin C intake but the proper prophylactic; first, the careful cleaning and brushing and polishing of the teeth which can be done first only by a dentist and which must be supplemented by the conscientious regular care by the patient.

Q. Doctor, I will show you now Exhibit 13-A, which has been marked for identification. Doctor, assuming a product called Ormotabs:

"Label: Contains sarsaparilla root extract (4-1), kelp, sassafras bark, papain, Chlorophyll."

And assuming further:

"Directions: As a dietary supplement, for experi-

mental use, 2 tablets provide approximately 200 per cent of the daily adult requirement for iodine, together with sarsaparilla root, sassafras bark, papain and 20 milligrams of Chlorophyll."

Assuming further, Doctor, and now referring to Government Exhibit 10, Page 8, Column 3, Paragraph 1:
439 "Since the early experiments with anemia, Chlorophyll has gone on piling up further honors for its health-giving qualities. American medical men within the past year or so have reported on some 1,200 cases where Chlorophyll was successfully used. The ailments treated ranged all the way from deep internal infections, such as peritonitis and brain ulcers, to pyorrhea and skin disorders. In case after case, the doctors were able to write on the patient's record, 'Discharged as cured.'"

Now, Doctor, keeping that in mind, do you have an opinion based upon reasonable medical certainty and from your training, education and experience as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of pyorrhea?

A. I do.

Q. What is your opinion?

A. Pyorrhea is a critical condition. First of all, pyorrhea is a poor term as I think the layman considers pyorrhea as something related to a disease of the gums.

This is a chronic condition which is caused by many causes and I do not know of any evidence that this Chlorophyll has any beneficial effect on pyorrhea.

440 The treatment in a case of pyorrhea, regardless of what the cause may be, includes in all instances mechanical therapeutic measures by the dentist within the oral cavity.

Q. Doctor, still keeping the product Ormotabs in mind, with the contents that was just read to you in the previous question, and referring to Government's Exhibit 8, Page 8, Column 3, paragraph 6;

And assuming further, Doctor:

"In serious mouth disorders, such as advanced cases of pyorrhea and Vincent's angina, Chlorophyll has brought immediate, positive results. Reports show that in such cases the gums tightened up entirely and have remained clean ever since the treatment."

Doctor, keeping that in mind, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether or not such a product so used might or could be effective in the cure, mitigation, treatment or prevention of the condition just mentioned?

A. Yes.

Q. What is your opinion, Doctor?

A. Again, in the case of pyorrhea and Vincent's 441 angina, the treatment must include local attention, and I cannot conceive how any substance taken in systematically is going to automatically clear up this condition.

Furthermore, I do not know of any report in which Chlorophyll has been reported to be effective or any reports confirming such claims.

Q. What is Vincent's angina, Doctor?

A. I suppose in this case the term Vincent's angina probably refers to an ulcerated gingivitis which is present in the oral cavity and which could be expressed by neglect, and which would result in much more severe systematic involvement. In such a case there is, of course, the danger of not only the health of the patient but the danger of protracted disease resulting from neglect of proper attention which is available.

If a patient has ulcerated gingivitis and because he believes in the claims here neglects dental attention, neglects to go to a dentist, there is real harm possible and likely because this condition is likely to become aggravated to the point when he finally does go to a dentist or physician the treatment is much more difficult.

Mr. Eardley: Cross examine.

442

Cross Examination by Mr. Breen.

Q. Doctor, referring to Exhibit 10, Page 16, the end of the first column:

"When nature warns," there appears the following:

"If you catch one cold after another, if you feel pain in your joints, if you black and blue easily, if your gums are soft and irritated, if cuts don't heal quickly, if you feel old and tired, then take warning. Consult your doctor immediately. And be sure to get plenty of the Vitamin C foods and to supplement your diet

with Vitamin C in concentrated form. These are all signs that your meals are not giving you even the fair minimum of 'C' necessary to health."

Don't you think, Doctor, that where the patient sees that article and is referred to his doctor, in the case of pyorrhea of the teeth or gums, that the word "doctor" means dentist?

Mr. Eardley: I object to that. He is a dentist.

Mr. Breen: A doctor of dental surgery is a doctor isn't he?

The Court: He may answer.

443 The Witness: Yes.

By Mr. Breen:

Q. Isn't it quite likely that when the patient reached the dentist or the doctor that he might prescribe Vitamin C?

Mr. Eardley: I object to that. He is a dentist.

Mr. Breen: He said he is a doctor.

The Court: He may answer.

The Witness: If the doctor finds or the dentist finds it indicated that the patient should have Vitamin C, he should do it; but why don't you let the doctor decide in such a case? You should tell the patient or the person who reads this, "Consult your doctor immediately and be sure." You are not taking any chances that the doctor might prescribe or not prescribe Vitamin C. You are telling him, merely giving him a simple choice. I think it is possible in reading this, and I am trying to put myself in the position of the average member of the public, you read this and it is somewhat involved, it seems to involve going to the doctor, but it is much easier to spend a little money and get Vitamin C. And if he does that, there is a false sense of security while he is doing that.

By Mr. Breen:

444 Q. Don't you think the patient—

Mr. Eardley: I object. I do not think the doctor had finished.

The Court: Finish your answer.

Mr. Breen: I beg your pardon, Doctor.

The Witness: I think the patient is likely to get a false sense of security. He is taking tablets. He doesn't go to a physician. He is taking something for a condition which

he does not know, and he may—in other words, he may suffer from a condition for which Vitamin C has no effect whatsoever.

Furthermore, I would like to point out in the statement here, you say to get plenty of Vitamin C foods. That is all right but you don't stop there. You go on with the statement, Vitamin C in concentrated form. There you are leaving it up to a member of the uneducated public as far as Vitamin C is concerned, to use self medication. By Mr. Breen:

Q. Don't you think if he goes to the dentist that he will be regulated by the advice of the dentist?

A. Yes.

Q. The dentist will control?

A. That is right, but I think that you are not just 445 telling him to go to a dentist or a doctor. That is incidental to the implication here.

Q. Read what it says?

A. It says: "Consult your doctor immediately. And be sure to get plenty of Vitamin C foods and to supplement your diet with Vitamin C in concentrated form. These are all signs that your meals are not giving you even the fair minimum of 'C' necessary to health."

There is another point, even if it is possible that the patient may be suffering in isolated cases from Vitamin C deficiency and he may take all of these vitamins in concentrated form, and in increased amounts, still the Vitamin C will not be of any value because the patient may be suffering from a disease which makes it impossible for him to utilize this Vitamin C which, of course, again means the emphasis on having symptoms which brings him to a physician or to a dentist and then let them decide what to do.

Q. They do that anyhow, don't they, every patient that goes to them?

A. There are a number of patients who may take this, who may take the good advice and not the other, but I think it is likely because, as I mentioned before, it is much easier to go to a drug store or some place where you 446 can buy tablets than it is to go to a doctor and to feel that is self sufficient and that the patient has taken care of his need.

Q. You mentioned gingivitis, if I understood you correctly?

A. Yes, sir.

Q. Forhan's toothpaste is supposed to be a cure for that, isn't it?

Mr. Eardley: I object, immaterial.

The Court: Sustained.

By Mr. Breen:

Q. Doctor, isn't it possible that where a patient takes Vitamin C that he will realize more good than harm from it?

A. If a patient needs Vitamin C, he needs it prescribed for the disease only after careful medical examination. If, however, he feels that taking Vitamin C will take care of his physical condition and he neglects the care that is available, then he is going to permit this condition to become aggravated and neglect it beyond any reasonable possibility of recovery.

Besides that, as I mentioned before, there is less than—and this is a conservative statement—less than 1 per cent of the instances of gingival diseases, which is a rather 447 universal condition, that are in any way related to an insufficient amount of Vitamin C.

Q. Don't dentists very frequently prescribe Vitamin C for their patients?

A. Not very frequently. In certain cases they do but that depends on the patient.

Q. Don't doctors prescribe it?

A. In certain cases and only after medical examination and not on the basis of just saying, take a tablet here and there and it is going to do you a lot of good. The physician doesn't do that.

Q. You think that every person should consult a doctor or a dentist?

A. If he is sick.

Q. When he is sick?

A. Yes.

Q. You do not think he should try and cure himself, is that right?

A. He should not try to cure himself because sometimes it is quite a task for a competent physician or dentist, who has spent a good part of their lives learning how to cure diseases, often to them it is sometimes quite a task to correctly treat a condition.

One other point about Vitamin C, there is a certain 448 amount of Vitamin C that we should all have and the

amount involved should be included in our every day diet, and the normal general adequate diet will take care of that.

Q. You are a licensed physician, I believe?

A. I am a licensed dentist.

Q. A dentist, I see. Not a physician?

A. No, sir.

Q. Doctor, do you believe that diet plays an important part in protecting the health of the teeth and gums?

A. No.

Q. You don't?

A. I would like to explain that, if you wish?

Q. Why not? What is that?

A. I would like to qualify that further.

Q. Go ahead, certainly.

A. When the enamels and dentines are growing and calcifying, they need a certain amount of minerals and vitamins have a bearing on the formation and calcification, even in the prenatal life when there are some portions of the teeth forming and calcifying, and also in the first years of life; but the amount involved is such that a diet, which is sufficient to make for normal growth and for normal maintenance of the tissues, will be sufficient to take
449 care of the needs of the teeth because the amount involved is extremely small.

In an adult individual the enamels and dentines are stronger, they have completed their formation. They have no blood supply. They have no cells. There are no cells present in the enamel and dentine and no amount of minerals or vitamins could help them to get good enamel and dentine.

Q. Define what you think is a sufficient diet—

Mr. Eardley: I object to that, immaterial.

By Mr. Breen:

Q. —to supply the necessary vitamins.

The Court: Sustained.

By Mr. Breen:

Q. Doctor, isn't it true that the bloodstream does clean the teeth?

A. The enamel and dentine? I don't know what you mean by that. I don't know what you mean by teeth. The enamel and dentine are not fed by the bloodstream because there are no blood vessels.

Q. What is the effect of the bloodstream?

A. Upon the gingiva?

Q. That requires mineral, does it not?

A. The amount that is required is so small that it is
450 automatically taken care of in a balanced diet. If
there is a deficiency—

Q. What do you call a balanced diet?

A. A balanced diet is a diet which contains a proper
amount of the fats, carbohydrates, proteins, minerals, vita-
mins and water.

Q. Do all people take a balanced diet, in your opinion?

A. No.

Mr. Eardley: I object.

The Court: Sustained.

Mr. Breen: This is cross examination, your Honor. I
think it is proper to find out.

The Court: He may answer. Do you remember the
question?

The Witness: Of course, not all people take a balanced
diet.

By Mr. Breen:

Q. They don't all have it, and where they do not have
a balanced diet, isn't the vitamin essential and necessary?

A. In some cases, to be determined by a careful exam-
ination and analysis of their diet; and not only that, but
an analysis of the blood, what they eat, and what they
are able to utilize.

451 Q. Where they do not have a balanced diet, is it
necessary to analyze anything?

A. How are they going to determine what is missing,
what particular part is lacking?

Q. They know what they eat, don't they?

A. I beg your pardon?

Q. Don't they know what they eat? Can you answer
that last question?

A. What was your question?

Mr. Breen: Read the question.

(Question read.)

A. Whom are you talking about? It is a rather vague
question.

Q. I am taking about people.

A. People?

Q. Yes.

A. Some people do, some people do not, I suppose. I suppose most people do.

Q. I am talking about that part of the people that don't take a balanced diet.

A. If they don't take a balanced diet, they don't have sufficient knowledge to.

Q. And to that class of people the taking of Vitamin C would not be harmful?

452 A. Yes, they would be harmed because if they take Vitamin C they think, "it doesn't matter what I eat, as long as I have this vitamin I am perfectly safe." And the problem may not be Vitamin C at all.

Q. Assume it is Vitamin C?

A. If you assume it is Vitamin C, that is true, but that assumption is very great because we have Vitamin C and that is not one of the deficiencies, not one of the characteristic deficiencies of the American people. In fact, scurvy, which is really a manifestation of Vitamin C, is practically nonexistent today. In medical schools it is very difficult to be able to demonstrate scurvy to the students today, whereas twenty or thirty years ago scurvy was more prevalent. I think that our American public is educated to the importance of taking orange juice, taking tomato juice or other vegetable juices containing an amount of Vitamin C which is sufficient for our average needs.

Q. Don't you think the general public is well educated on the necessity for taking vitamins?

A. Very much so, but that is overdone. Vitamins are important but they should be obtained in our natural food, for three reasons: In the natural food we eat we get our needs cheaply. They get it safely and they don't get 453 a false sense of security that by taking an extra tablet they have protected themselves against any number of possible diseases which they may have or may not have.

Q. Isn't it possible, Doctor, that the opinions you here expressed on the stand are not shared by other men in your profession?

A. I believe that I am representing the accepted recognized viewpoint, and for evidence of that I think it may be pertinent to state that the recent reports of the Council of Dental Therapeutics, American Dental Association, and the published reviews on the effect of nutritional diseases on the oral structure, the examination and analysis by properly qualified and competent men in the profession

selected because of their experience, are in full agreement.

Mr. Breen: That is all.

Mr. Eardley: No further examination.

The Court: The Court will stand adjourned until 10 o'clock tomorrow morning.

(And thereupon the further proceedings in this cause were continued to Wednesday, March 20, 1946, at 10 o'clock a. m.)

454

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * * (Caption—No. 45 CR 488) * * *

Wednesday, March 20, 1946,
10 o'clock a. m.

Court convened pursuant to adjournment.

Present:

Mr. Robert C. Eardley, for the Government;

Mr. James W. Breen, for the Defendants.

DR. ADOLPH ROSTENBERG, JR., called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. State your name, please.

A. Adolph Rostenberg, Jr.

Q. Where do you live?

A. Chicago, Illinois.

455 Q. You are a licensed physician, licensed to practice medicine and surgery in the State of Illinois?

A. I am licensed in the State of New York and the District of Columbia.

The Court: Keep your voice up, speak louder.

By Mr. Eardley:

Q. What if any education did you have to prepare yourself for your profession?

Mr. Breen: Where did he say he was licensed, I did not get the answer.

A. New York and the District of Columbia.

The Court: Read the answer.

(Answer read.)

By Mr. Eardley:

Q. What if any education did you have to prepare yourself for your profession?

A. I received my Bachelor Degree from the Columbia College in the State of New York in 1926; I then went to McGill University School of Medicine in Montreal and received my M. D. Degree from there in 1911. I then interned for two years in the Staten Hospital in New York City. After I finished my internship I attended the New York Post-Graduate Hospital Medical School and on the graduate faculty of the Columbia University and I 456 was connected with that institution for six years, during which time I took the graduate courses in Dermatology and Syphilology.

Q. After that, what did you do?

A. During that same period I also was connected with other hospitals in New York City in the Dermatology Department; and in 1939 I left New York and came to Washington where I was the Dermatologist for the Food & Drug Administration. I was connected with the Food & Drug Administration until August of this year, at which time I came to Chicago.

Q. What did you do after you came to Chicago, Doctor?

A. I was invited to come to Chicago as Associate Professor of Dermatology and Associate Director of the Allergy Unit of the University of Illinois School of Medicine.

Q. Are you teaching there at the present time?

A. My duties there are in connection with teaching graduate physicians, teaching allergy and arranging courses of instruction in those subjects to graduate physicians, and doing research in that line.

Q. Are you a member of any societies or associations, Doctor?

A. I am a member of the American Medical Association; of the Society for the Investigative Dermatology; the American Academy of Allergy; the Chicago Society of Allergy.

I am a diplomate of the American Board of Dermatology.

Q. What do you mean by being a diplomate of the American Board of Dermatology?

A. Well, in various medical specialties they have these examining boards whose purpose is to see that the physi-

cian has had special training and knowledge in the field and for the most part, I think I can only speak personally, the American Board of Dermatology and Syphilology there is a prerequisite of training required which, in this case, is five years and that has to be of a certain character and at a satisfactory institution.

After you have satisfied the Board as to your prerequisite from the point of training, you are then entitled to sit for the examination and they examine you both by written examination and examinations on publications, and examinations on pathological material; and if you pass that, they give you a diplomate.

Q. Have you published any articles, Doctor?

A. About fifteen articles in the field of dermatology and allergy.

458 Q. Have they been published in scientific magazines?

A. Yes, they have been published in some of the various medical journals, such as the Journal of the American Medical Association; the Archives of Dermatology and Syphilology; the Journal of Allergy; the Journal of Immunology, and the Journal of Investigative Dermatology.

Q. Doctor, I will now show you Government's Exhibit 12, for identification, and also Government's Exhibit 10, for identification.

Assuming, Doctor, a product called Cetabs, which you now hold in your hand as Government's Exhibit 12; and assuming further:

"Label:" which contains the following:

"Each tablet contains not less than 600 U.S.P. units of Vitamin C, (30 milligrams ascorbic acid) and necessary excipients. One tablet furnishes the full minimum daily adult requirement for Vitamin C, which is 600 U.S.P. units."

/ Doctor, referring to Government's Exhibit 10, and assuming further, page 16, across the top:

"Science explains why you need Vitamin C every day."

Now, referring to that particular paragraph and
459 assuming further:

"Why you need 'C' Daily.

"To help stay normally young, to help—"

Mr. Breen: What are you reading from, please?

Mr. Eardley: Don't you find it, Mr. Breen? It is down about the third paragraph.

Mr. Breen: The first paragraph of that first column should be read.

Mr. Eardley: Strike that out; I will start over again.

Q. Now, Doctor, referring to the first paragraph:

"Do you want to age faster, or stay normally young? Do you want sound teeth and gums? Stronger elastic blood vessels? Better digestion? Clearer complexion? More vitality? Science does not know all of the benefits you get from Vitamin C. But here are some of the things known about 'C,' the vitamin that can't be stored in your system, the vitamin you should get in your food every day."

Now, Doctor, with that in mind, do you have an opinion based upon reasonable medical certainty and from your training, education and experience as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of the condition mentioned, clear complexion?

460 A. Yes, I have an opinion.

Mr. Breen: Let the record show, your Honor, an objection.

The Court: The objection is overruled.

By Mr. Eardley:

Q. What is your opinion, Doctor?

A. I have an opinion. My opinion of this is this product would be of no value for improving the complexion or making it a clearer complexion.

Q. Why, Doctor?

A. The reason for that is, the term "complexion" implies the appearance of the skin which results from a multiplicity of causes.

And the various factors which go into and constitute what we term a person's complexion, are:

- (1) The amount of pigment in the skin.
- (2) The individual variation in anatomical construction as to the size of the pores and the number of pores per unit area.
- (3) The individual variation as to the richness or the pooriness of the superficial blood supply to the part.

The capillaries and plexus which underlie the basal layer of the skin; and, finally

461 The depth of the plexus beneath the skin surface.

The result that is called the complexion, is really the resultant interplay of all of these factors, and the majority of them are, you might say, inherited anatomical factors which cannot be altered. In a sense a person is predetermined to have a certain color hair, a certain height; and so, too, you in a sense are predetermined to have a certain complexion.

So that Vitamin C would not have any value.

Moreover, the amount that is furnished by one of these tabs is no more than you would get, less than you would get in an ordinary daily intake of food. A person eating an ordinary well balanced diet would get all they would require, even if it could be of any value, which it could not.

Q. Now, Doctor, keeping in mind the labeling that was read to you in the previous question, and now again referring to Government Exhibit 10, page 17, the first paragraph:

"How 'C' affects your complexion. Vitamin 'C' starvation often betrays itself in the complexion. If blemishes heal with difficulty, if you bruise easily, you
462 may be low on 'C.' Plenty of 'C' helps keep you feeling young, buoyant, alive! If you lack Vitamin 'C' foods and get a supplementary source of Vitamin 'C'—then you will look better!"

Doctor, keeping that in mind, and assuming further—

Mr. Breen: You haven't read that correctly, the last four words.

Mr. Eardley: "Then you will look and feel better." I am sorry, I was reading from the notes and not the book.
By Mr. Eardley:

Q. Doctor, have you an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment and prevention of the above-mentioned condition?

A. I have.

Q. What is your opinion, Doctor.

A. That this product would not be of any value for the conditions mentioned.

Q. Why, Doctor?

A. Well, firstly, one reason is similar to that I have
463 just given, namely, that the amount of this product is
trifling compared with what one takes in every day.

Secondly, the paragraph just read includes a myriad of
conditions. The word "blemishes" embraces practically
any and all skin ailments and would include everything
from infection such as acne, skin tuberculosis, skin syphilis,
any infection can be manifested as an ailment, and any
form of ailment is called a blemish. It embraces tumors of
the skin; it embraces what you call congenital anomalies,
which are probably the most common things that a layman
would call a blemish. And by congenital anomalies you
mean a birthmark or one or another thing.

A birthmark can be a little localized collection of cells,
such as we call a mole, or it can be a little localized col-
lection of blood vessels as you have in these so-called super-
ficial marks; or you can have a localized collection of pig-
ment such as you have in the ordinary liver spot. Vitamin
C would not be of the slightest value for any of those con-
ditions.

It is true it would not do any particular harm in such
conditions, but if the condition that a layman interprets
as a blemish is of a more serious nature, fooling around
with something like this and yielding to delay in the
464 adequate treatment would indirectly constitute harm.

Then so far as the statement "bruise easily," where
that statement is made,—if you bruise easily, there are
many reasons for that bruising. One of them is an ab-
normality in the elastic fibres of the skin in which case,
when a person falls, they develop much more damage than
a normal person does. Those things are inherited ab-
normalities which are not correctable by any means.

There are instances where bruising easily is related to
idiosyncracies of certain tracts, and the only way such
can be corrected is to remove the tract, and additional
Vitamin C or anything else will not be of value.

Q. Now, Doctor, still keeping in mind the product Ce-
taps with its labeling, and assuming further, and now re-
ferring you to page 17, the last paragraph, third column:
"Complexion."

And assuming further:

"Are you having trouble with your complexion? Is it dull and sallow? Do pimples and other blemishes take a long time to heal? Then your diet may be dangerously low on 'C'."

465 Doctor, with all of those things in mind, do you have an opinion, based upon a reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of any of the above mentioned conditions?

A. I do.

Q. What is your opinion, Doctor?

A. That the product would be of no value for those conditions.

Q. Why, Doctor?

A. Well, I think I have more or less covered the complexion before; the same reasons, and those same reasons apply to the words "dull and sallow" because complexion sallowness is a complexion that is primarily an inherited characteristic which will not be altered by diet one bit.

Blemishes, I have enumerated some of the myriad of things that may be included under that notation.

So far as pimples go, pimples are ordinarily one of two entities. It is either a superficial infection of the hair follicles, which we term folliculitis, or it is in the form
466 of acne which is probably a very common disorder particularly in the adolescent period.

Acne, so far as known, is caused by an imbalance between certain hormones in a person under puberty, when the endocrine glands start pouring out skin hormones in much greater quantity, apparently, when there is an imbalance between certain of these small sebaceous glands of the skin and the hair follicles which may make a local overgrowth which is called hyperkeritezolia; and this causes little plugs—

Mr. Breen: I object, your Honor. I do not think there is any question before the witness.

The Court: Will you refer back to the question, Mr. Reporter?

(Question read.)

The Court: This is responsive, proceed.

The Witness: This hyperkeriteization is a little plug in the follicles and that plug is a kumatone or blackhead that is the basic reason for acne.

For the reasons I have given and explained here, a product of this nature would be of no value in acne.

And then, of course, a secondary infection superimposed from the vascular area is what the layman regards 467 as acne.

And in pimples again, every boy has pimples which start from an infection of the follicles, in which you have an infection without the plug.

It is very evident that Vitamin C is not of the slightest value, I mean this product described in the hypothetical question, which has been tried and found to be of no value. By Mr. Eardley:

Q. Doctor, I will show you now Government's Exhibit No. 14, which has already been identified. Doctor, assuming a product called Ribotabs:

"Label: Each tablet contains not less than 1,000 micrograms of Riboflavin."

And assuming further, Doctor.

"Label: Daily Riboflavin requirement. The daily minimum adult requirement of Riboflavin, Vitamin B-2 or G, is 2,000 micrograms which is equal to 2,000 gammas or 2.0 milligrams. The requirement for children, pregnant and lactating women, varies according to age and circumstances."

Assuming further:

"Directions: As a dietary supplement, 2 tablets supply the minimum daily adult requirement set by the 468 United States Government. For relief of deficiency conditions three or more tablets daily, as required."

Doctor, now referring to Government's Exhibit No. 10, page 31, and assuming further, Doctor:

"The vitamin essential for healthy skin, hair and eyes,"

which is at the top of the page.

With all of these things in mind, have you an opinion, based upon a reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of any of the above conditions, especially healthy skin and hair?

A. I do.

Q. What is your opinion, Doctor?

A. My opinion is that this article given according to these directions, would not be of benefit or could not be of value for the claimed healthy skin and hair.

Q. Why, Doctor?

A. To start with, the skin, the term "healthy skin" of course implies that it has no abnormality or diseases or infection of any nature whatsoever, and the infections 469 to which the skin can be subject vary from everything from a simple little folliculitis to a serious fungus infection, tuberculosis, syphilitis and a myriad of ones in between. There can be all sorts of new growths on the skin from the simple little collection, such as we have already named, in a mole in which they have little cells of no particular significance, and we can go on the other hand to the other extreme which would be one of the most malignant forms of cancer which can arise in the skin and be initiated there.

Then you can have abnormalities of the skin, some of which I have already enumerated, such as an abnormality in the elastic tissue, abnormalities in the pigment formation and many others:

In none of the conditions which I have named would Riboflavin, even in much larger doses than that which is furnished here, which again is only roughly what would be taken in normally in a normal dietary intake, and the Riboflavin would not be of the slightest value.

Now, turning to the hair, there again the hair and the scalp and the follicles of your hair in turn depends on and is subject to a wide variety of disorders, and many of them are identical to the ones found in the non- 470 hairy areas of the skin, and some more or less unique to the hairy regions themselves.

All of the infections I have already named, and all of the new growths I have already named, can exist in the scalp in turn by virtue of their presence there, affect the hair.

Then in addition there are abnormalities which cause fragility of the hair, and a big node will form so that the hair will break very easily. In none of those conditions would Ribobavin be of any value.

There is only one known condition, so far as I know, in which Ribobavin has any utility in the skin and that is

not a common condition, and for that you would need it in larger quantities than would be furnished by the product mentioned here. In all other conditions of the skin this product would be of no value and for any condition of the hair it would be of no value.

Q. Now, Doctor, keeping in mind the labeling and directions of Riboflavin, and assuming further, and now referring to Government's Exhibit 10 again, page 31, the top of the page there; and assuming further:

"Here's health for an oily skin. An abnormally oily complexion may be more than a social handicap, it is often one of the early signs that Riboflavin is inadequate in the diet. Technically, this skin condition is known as seborrhea. Greasy accumulations usually appear in the folds of the face, especially around the nose and lips, but if the vitamin deficiency is severe enough, other parts of the body are affected. Experts point out that women show Riboflavin deficiencies more often than men, and they also have more complexion troubles."

With those facts in mind, do you have an opinion, based upon a reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or cure of an oily skin?

A. I have an opinion.

Q. What is your opinion, Doctor?

A. That the product would not be of value.

Q. Why, Doctor?

A. Well, an oily skin again can arise from several causes. The most common cause by far is it is just the nature of the person to have an oily skin. Some of us seem to be born with oil glands, which we all have in the skin, in a sebaceous skin and some seem to have glands which function more actively than others. And some such people just seem to secrete more oil than a person whose glands are not so actively functioning. And, secondly, another factor which constitutes an oily skin is where certain infections seem to predispose the excess functioning of these glands. And in neither of these cases would Riboflavin be of any value.

Mr. Eardley. You may cross examine.

Cross Examination by Mr. Breen.

Q. Doctor, directing your attention to page 17 of Exhibit 10 in the second column:

"The nutritional importance of Vitamin C and its favorable relation to health. Note: Since the physical disturbances listed in this chart may be the result of other causes than vitamin and mineral deficiencies, a physician's skilled judgment is usually necessary to determine actual presence."

Did you observe that?

A. I observe it now, yes.

Q. Would you say that was good advice to insert 473 here for a layman?

A. Well, by itself it may be good advice, but in juxtaposition with the rest of the page I do not think it is of any value. I mean, it has to be taken in its context.

Q. Do you know what the average person thinks when he reads the word "complexion"?

A. Yes, I think I have a good idea of what they think of that.

Q. What is your opinion of that?

A. It is hard to define it in one word but a close approximation I think you can say would be the color of the skin.

Q. Don't you think that the conclusions you have mentioned are rather far-fetched?

A. No, because we have people coming to the skin clinic all the time and telling us something is wrong with their complexion, or some such phraseology, in a wide variety of skin disorders.

Q. Have you ever prescribed Vitamin C in your practice?

A. Yes.

Q. Do physicians frequently prescribe it?

A. Oh, I would not say frequently; I would say when they do prescribe it, they probably prescribe it in considerably 474 siderably larger quantities than are given here.

Q. Did I understand you to say that you were employed by the Food & Drug Administration?

A. That is right.

Q. When were you employed?

A. 1939, I started there January, '39 and I left July, '45.

Q. Where were you employed, Doctor?

A. Washington, D. C.

Q. Where?

A. Washington.

Q. You believe in other schools of healing arts besides the medical school?

A. Could you be a little more specific in what you mean by other schools?

Q. Chiropractors, for one, and naturpaths?

A. I think most of the teaching advanced by these schools are predicated on erroneous assumptions.

Q. Is that opinion of yours not in some way prejudiced by the fact that you are a physician?

A. No. I think it is prejudiced by scientific facts, if you want to investigate and find out.

Q. Have you ever used Vitamin C, Doctor?

A. Yes, I have used Vitamin C.

475 Q. Did you ever use any of Lelord Kordel's Vitamin C?

A. No.

Q. Have you made any chemical tests of it, Doctor?

A. Mr. Kordel's C?

Q. Yes.

A. I am not a chemist and I have never done so.

Q. Did you have a chemical test made?

A. I have had no chemical test made.

Q. As a medical doctor, aren't you opposed to all products sold for self medication?

A. No, I am not.

Q. I could not hear your answer.

A. I say, no, I am not.

Q. You are not. Then you are not opposed to the Lelord Kordel products, are you?

A. Not if the proper claims are made for them.

Q. Have you read the labels on these products?

A. I have just read what Mr. Eardley asked me to read and what you have pointed out just now.

Q. Do you see any objection to those labels that you have read?

Mr. Eardley: I object to that, immaterial. The exhibits speak for themselves.

The Court: Sustained.

476 Mr. Breen: That is all, Doctor.

Mr. Eardley: That is all, Doctor.
(Witness excused.)

HERMAN ROSENBERG, called as a witness on behalf of The Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. State your name, please.

A. Herman Rosenberg.

Q. What is your address?

A. San Francisco, California.

Q. What is your business or occupation?

A. I was recently manager of a Rosenberg Original Health Food Store in San Francisco.

Q. How long did you hold that particular position?

A. About two and a half years.

Q. What did the store sell?

A. We sold various products of many different natures or different commodities. If you want them enumerated, I can enumerate them.

Q. I will ask you this question: Did you sell any Le-lord products?

477 A. Yes, we did.

Q. Can you name some of those products you sold?

A. We have sold Sarsaparilla Tea; Kordel Cetabs; Kordel A, Daily A; and many others that were listed.

Q. How large a store did you have there, Mr. Rosenberg?

A. Well, the actual floor size of our store runs about 25 feet wide by 100 feet deep; that is the actual length of it.

Q. Were you employed by that store on February 28, 1945?

A. I was.

Q. As manager?

A. I was.

Mr. Eardley: Will you mark these Government's Exhibits 26 and 27, for identification?

(Whereupon said documents were marked for identification, Government's Exhibits 26 and 27.)

By Mr. Eardley:

Q. I now show you Government's Exhibit 26, for identification, and ask you if you have ever seen that before?

A. Yes, I have.

Q. Where have you seen it before?

478 A. In our stock.

Q. I will show you Government's Exhibit No. 27 and ask you if you have ever seen that before?

A. I have.

Q. Where have you seen that before?

A. Also in our stock.

Q. Referring to Government's Exhibit No. 27, "What you can do about relieving the agonies of arthritis"; did you carry a stock of these?

A. We did.

Q. Where did you have them in your store?

A. Well, for the purpose of selling we had them in a cabinet or bookcase, upon entering the store, to the right of the store.

Q. Where did you keep the products, Lelord Kordel's Sarsaparilla Tea?

A. I would say on the same side, about 25 feet away on a shelf.

Q. Again referring to Government's Exhibit 27, were these in sight of all your customers?

A. They were to some extent, I would say, they were because they had access to the case if they wanted to go there. Of course, there was another case in front of them which did not quite cover that whole bookcase.

479 Q. Did customers go there and look those over?

A. Many times.

Q. Did you sell those or give them away?

A. Well, we sold them in most cases, but if I was generous I would give one away occasionally.

Q. Why would you give them away?

A. Just because I found they were interested in the subject, and perhaps for promotional reasons.

Q. They helped to promote the sale of Kordel products?

A. Most likely.

Q. Where did these booklets come from, do you know?

A. I believe they came right directly from Chicago.

Q. How were they received?

A. In conjunction, I believe, with other merchandise, if they were ordered with other merchandise.

Q. Did they come at the same time as the Sarsaparilla Tea was sent and in the same carton?

A. I could not definitely say. If they ordered at the same time, most likely they would.

Mr. Breen: I move the answer be stricken out.

The Court: On what ground?

Mr. Breen: He is speculating, he is not positive.

The Court: Not what they would do but what they did, that is what you are to answer.

480 The witness: There are many times that they did come with the merchandise.

Mr. Breen: I move the answer be stricken.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: The objection is sustained. Will you answer that question directly?

The Witness: In answer to that question, I can only say I would not be in position to say that they came in the same carton.

The Court: The answer is you don't know?

The Witness: I don't recall that.

By Mr. Eardley:

Q. Do you have any records to show how this Government Exhibit No. 27 and Government Exhibit No. 26 were received?

A. None other than the invoice.

Q. Do the invoices show they were both received in the same carton and at the same time?

Mr. Breen: I object.

The Court: Sustained; the invoice would be the best evidence.

The Court will recess for five minutes.

(Recess.)

481 By Mr. Eardley:

Q. What other magazines or circulars did you receive from Lelord Kordel?

A. We have received other booklets called "Nutrition Guide," "Sudden Victory,"; and a booklet on constipation and some booklets called "Health Today."

Q. What did you do with the booklets, Health Today?

A. We distributed them to our customers.

Q. How was this distribution made?

A. They were put on the counters or in the literature rack and they could pick them up if they wanted to.

Q. Was the booklet "Health Today" free?

A. Yes, sir.

Q. Would people look at the booklet and then purchase Kordel's products?

A. A great many would.

Q. Were any of these Health Today booklets wrapped up in making a sale?

A. At times they were.

Q. Did Inspector Griebling visit you on or about February 28, 1945?

A. He did.

Q. What did he do when he came to visit you?

A. Well, he came in and asked for various different 482 samples, and went behind the counter and I picked out the ones that he wanted; and we made a bill of sale for them.

Q. I will again refer to Government's Exhibits 26 and 27. Did he take those two samples at that particular visit?

A. He did.

Q. From the shipments that were made by Kordel?

A. That is right.

Mr. Eardley: Cross examine.

Mr. Breen: I move to strike all the answers as to Health Today. I do not think this, your Honor, is mentioned in any of the informations.

The Court: What is the wording of the indictment on that?

Mr. Eardley: It is mentioned all the way through, your Honor.

The Court: All right, refer to it.

Mr. Breen: Only in the shipments to Seattle.

Q. You are from San Francisco, are you?

A. Yes, sir.

Mr. Breen: Mentioned in the shipment to Seattle, as I recall.

Mr. Eardley: That is true, your Honor.

483 The Court: Then the objection is sustained.

Mr. Breen: I move to strike all evidence with reference to Health Today.

The Court: That applies to all evidence on Health Today.

Mr. Eardley: I will offer now Government's Exhibits 26 and 27. There is no objection?

Mr. Breen: No objection.

The Court: They are received.

(Said documents so offered and received in evidence were marked Government's Exhibits 26 and 27.)

Mr. Breen: Are you through with this man?

Mr. Eardley: Yes, you may cross examine.

Cross Examination by Mr. Breen

Q. Were these arthritis booklets sold for 25 cents in your store?

A. They were.

Q. And the price 25 cents is marked on the bottom of it?

A. I believe so.

Q. In the right-hand corner. Did I understand you 484 to say in your direct testimony that you gave these away somewhere?

A. Occasionally.

Q. Who told you to do that?

A. I took the liberty myself, being the manager of the store.

Q. You were manager of the store, were you?

A. Yes, sir.

Q. And you gave them away and did not collect the 25 cents for them?

A. No, sir.

Q. You were never told by Mr. Kordel to give those away, were you?

A. No, I was not.

Mr. Eardley: I object to that, immaterial.

Mr. Breen: I think it is material.

The Court: The answer may stand.

By Mr. Breen:

Q. If a customer in your store, or a prospective customer in your store bought any of Kordel's books, this book on arthritis, would he be required to buy any of the products?

A. No, not necessarily.

Q. Is it not a fact that you received this book on 485 arthritis as merchandise to be sold at 25 cents apiece?

A. They were charged in as that.

Q. Yes. Have any of your customers ever made any

complaint to you about Lelord Kordel products?

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

Mr. Breen: For the record, I offer to show, offer to prove that no purchaser of Lelord Kordel's products in San Francisco made any complaint.

The Court: Well, the objection is sustained on a further ground, not proper cross examination.

Mr. Breen: You are right there, it is not cross examination. I will withdraw it and come to it later on.

By Mr. Breen:

Q. Did anyone talk to you before testified in this case?

A. Talked to me?

Q. Yes, anybody from the Food & Drug?

A. I just had conversation with them.

Q. What?

A. Just conversation.

Q. Just a conversation?

A. Yes, sir.

486 Q. Did they ask you what you were going to say?

A. No, sir.

Q. Did they tell you what to say?

A. Not directly, no.

Q. What did they say indirectly or directly?

A. We just spoke of the invoices, and they asked me what I had brought with me; and also the fact that I had those products in stock; and asked me the location of the various different things that we had.

Q. If a customer purchased Kordel's Sarsaparilla Tea in your store, would he be given one of those books free of charge?

A. No, sir, not necessarily. That was optional on my part.

Q. Well, would you say that the booklets accompanied the product?

A. I beg your pardon?

Mr. Eardley: I object to that. That is a question for the Court.

Mr. Breen: Well, the merchandise —

The Court: Read the question.

(Question read.)

By Mr. Breen:

Q. Put it this way: Did these books accompany the 487 product; put it that way.

The Court: You mean it was received or sold?

Mr. Breen: When it was received.

The Witness: Well, according to the invoice, it was billed on the same invoice. I assume it came at the same time.

By Mr. Breen:

Q. Do you know?

A. I could not remember all of those things now.

Mr. Breen: That is all.

The Witness: Because we did receive a lot of merchandise.

Mr. Breen: That is all.

Redirect Examination by Mr. Eardley.

Q. You talked to me about this case, didn't you?

A. Yes, sir.

Q. You were told to tell the truth?

A. Exactly; and that is what I am doing.

Mr. Eardley: That is all.

Mr. Breen: That is all.

(Witness excused.)

Mr. Breen: Your Honor, there is a motion pending 488 that you reserved ruling on to give the government a chance to recall the witness that is from Seattle. I think he may have left the city; I hope he did not. Do you want to put him on now?

Mr. Eardley: You are referring to Mr. House. He is still under subpoena. We have not excused any our witnesses. You are referring to him?

The Court: May I suggest you call him?

Mr. Eardley: Judge, I will call him right after this witness.

Mr. Breen: Yes.

The Court: Pardon me, is this invoice that was testified to here a moment ago by Rosenberg, is that in evidence?

Mr. Eardley: No, it is not.

FRANK A. GRIEBLING, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name?

A. Frank A. Griebling.

Q. What is your address?

A. 512 Federal Office Building, San Francisco, California.

Q. What is your business or occupation?

A. I am a Federal Food & Drug Inspector.

Q. What are your duties as a Federal Food & Drug Inspector?

A. We have a number of duties. For instance, sampling foods and drugs and their component parts, cosmetics and devices suspected of violation by misbranding or adulteration.

Secondly, factory inspections and the forms thereof, the raw materials used in manufacturing the products, the processes of manufacturing, the standards of the manufacture, interstate shipments, the labels and the weights.

Q. Calling your attention—pardon me. Had you finished?

A. And, third, specific assignments given to us by the Chief of the station or the Chief Inspector.

Q. Calling your attention to February 28, 1945, were you employed in that capacity on that particular date?

A. Yes, sir.

Q. Will you tell us were your duties just as you have testified?

A. Yes, sir.

Q. Did you have any special assignment on that particular day, do you recall now?

A. I did.

Q. What was that assignment?

A. I was assigned to go to the Rosenberg Health Food Store, 1120 Market, San Francisco.

Q. Who did you see there?

A. I contacted Mr. Herman Rosenberg.

Q. Did you have a conversation with him?

A. I did. I told him the object of my mission.

Q. Is that the witness who was just on the stand?

A. Yes, sir.

Q. What did you say to him at that particular time and what did you do?

A. I told him I was there to see what they had in the stock of the Kordel stock, and the manner in which it was promoted for sale and to see the collaborating literature accompanying the articles.

I first checked the invoices and shipping records, and then I invoiced the stock. And Mr. Rosenberg was very cooperative. He and I went through the store and checked the stock on the main floor and the shelving, and also the stock in the balcony. And then we went through all the literature and booklets. In the front end of the store

491 about ten feet from the entrance on the east wall there was a glass panel shelf that contained seven of our exhibits, or that later became exhibits, of which there were innumerable numbers of each of these exhibits on the shelf.

From there we went to both counters, the wrapping counters where were exhibited the booklets "Health Today, Spring, 1945."

Mr. Breen: I object to that. Health Today is not in the indictment, your Honor.

The Court: Well, he is describing what he took over there.

The Witness: Health Today.

The Court: The Court has already ruled it is incompetent here and there is nothing alleged in the information.

The Witness: Health Today and the numbers were in 1943 and 1944 and No. 9 of 1945.

Right in back of this wrapping counter, within four feet of it, was the merchandise, the Kordel merchandise.

From there we went to the rear of the store, and on our left before ascending the steps was several dozen of the Fenugreek Tea.

492 At the top of the stairs on the right was a shelf of booklets, we encountered a number of booklets there and that represented his surplus stock that was represented in the glass panel case downstairs.

Also on the balcony there were 72 booklets accompanying the surplus stock, Kordel surplus stock; and in the back room adjoining the balcony were seven bundles of Health

Today, No. 9, Spring 1945. Each bundle contained 300 booklets. One bundle had been opened and 150 booklets had been taken out.

By Mr. Eardley:

Q. Did you take any samples at this particular inspection?

A. Yes, I did.

Q. I show you Government's Exhibit No. 26 and ask you if you have ever seen that before?

A. I sampled this on 2-28-45, according to my writing on here, and to the official number, official government number 29408-H, with my initials F.A.G.

Q. What did you do with it after you had taken that sample?

A. I took this sample, I collected this sample and took it to the office along with the literature that accompanied it.

Mr. Breen: We can save some time. That is in 493 evidence, I believe, your Honor.

Mr. Eardley: You admit these samples were taken by this witness and that they came from the same shipment?

Mr. Breen: They were in the store, yes, but not about the same shipment, I am not making the admission.

The Witness: I took the sample and the exhibit to the office in the Federal Office Building, our office, where I packed it, where I wrapped that sample in clean brown wrapping paper and sealed it with the official seal, government official seal, with the same number, the same date, but instead of putting my initials on I signed it. Then this was packed into a clean fibre shipping case and shipped by Railway Express to the Chicago District, to the Central District, Chicago Station.

By Mr. Eardley:

Q. I show you Government's Exhibit No. 27 and ask you if you have ever seen that before?

A. Yes, sir. This is one of the booklets, the booklet, Exhibit C, that I picked up on that date.

Q. What did you do with that after you picked it up and identified it?

A. I took it to the office and identified it, it was used as an exhibit.

Q. Where was Exhibit No. 27 in relation to Exhibit 494 No. 26 in the store?

A. About 25 feet from the merchandise.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. Did I understand you to say you paid for this arthritis book, or did you take it away without paying?

A. They were billed to us.

Q. They were billed to you?

A. Yes, sir.

Mr. Breen. That is all.

(Witness excused.)

Mr. Eardley: Mr. House?

(No response.)

Mr. Eardley: Dr. Markson?

Mr. Breen: Have you lost Mr. House?

Mr. Eardley: I hope not.

495 DR. DAVID E. MARKSON, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name?

A. Dr. David E. Markson.

Q. Keep up your voice so we can hear.

Mr. Breen: I beg your pardon?

A. David E. Markson.

Mr. Breen: Markson?

The Witness: Yes.

By Mr. Eardley:

Q. Where do you live, Doctor?

A. Chicago.

Q. Are you a licensed physician and surgeon of the State of Illinois?

A. I am.

Q. Where did you receive your preliminary training, Doctor?

A. Northwestern University Medical School.

Q. When was that?

A. In 1912.

Q. After your graduation in 1912, did you serve an internship anywhere?

496 A. Yes, sir. I served three years internship.

Q. Where was that, Doctor?

A. Two years at the St. Louis City Hospital, and one year as resident in the Mt. Sinai Hospital.

Q. After that, what did you do?

A. Shortly after that I went into the Army.

Q. How long did you serve in the Army?

A. Approximately 22 months.

Q. After your discharge, what did you do?

A. I came back to Chicago.

Q. Did you enter the practice of medicine?

A. Practiced medicine again.

Q. Where did you establish yourself at that particular time?

A. In the northwest side of Chicago.

Q. Were you associated with any school at that particular time?

A. I immediately became associated with Northwestern University Medical School.

Q. In what capacity, Doctor?

A. I started in, of course, in the lower grades or rank and finally I got up to the rank of Assistant Professor in the Department of Medicine.

Q. When you started in, was that what was known
497 as internal medicine?

A. Internal Medicine.

Q. Did you specialize in any work?

A. I did, beginning in 1924, I became Director of the Arthritis Clinic.

Q. What were your duties as Director of the Arthritis Clinic, Doctor?

A. Our duties there consisted of doing research work, as well as the treatment of patients.

Q. Where is this Arthritis Clinic established now, Doctor?

A. Now it is at the Northwestern University Medical School.

Mr. Breen: Doctor, will you keep your voice up, please? It is very hard to hear.

The Witness: I will try.

By Mr. Eardley:

Q. What particular work are you doing now in the Arthritis Clinic?

A. We are now, of course, in research work; and besides that we are taking care of these patients from a medical point of view and treating them. In other words—

Q. Doctor, have you received any special recognition in your work with reference to arthritis?

498 A. Yes.

Q. What is that recognition you received?

A. I am a member of an association, probably only about fifty or sixty men, American Rheumatic Association. All of those men have done special work in the field of arthritis. I am Director of the Arthritis Clinic at Northwestern University. I have done research work continuously since 1924, and have published approximately twenty-five articles in medical journals on the subject of arthritis.

Q. Can you define these articles a little more specifically?

A. Articles in reference to, various types of articles. Some of these were very academic, basic articles on physiology.

Mr. Breen: Your Honor, the witness will have to talk louder.

The Court: Yes, you will have to keep your voice up.

The Witness: Some of those articles were on purely basic findings. I mean, they were academic studies. Others were on the treatment and various other phases of arthritis.

By Mr. Eardley:

Q. Are you doing any particular specialized work 499 now, Doctor?

A. Yes, we are carrying on research continuously in the field of arthritis.

Q. Are you in the general practice of that work, now, Doctor?

A. I am not a general practitioner. My work is practically limited to the field of arthritis. Ninety per cent of my work is arthritis and the other ten per cent internal medicine.

Q. How are these patients brought to you, Doctor?

Mr. Breen: I object. That is immaterial.

The Court: Sustained.

By Mr. Eardley:

Q. Are patients specially assigned to you, Doctor?

A. You mean in the clinic or in my practice?

Q. In your practice?

A. Mostly referred to us from other physicians.

Mr. Breen: I object to that, your Honor. It is immaterial.

The Court: Sustained.

By Mr. Eardley:

Q. Doctor, how many arthritis patients do you see per week?

A. Up until the war, we were running our clinic, 500 running continuously since 1924 and we had approximately one hundred cases a week; but during the war we have had no personnel, and we have had to drop our clinic to once a week. It will average probably the last four years, fifty cases a week.

Mr. Breen: Keep your voice up, Doctor.

The Court: Doctor, you can talk louder than that.

The Witness: I will try.

Mr. Breen: How many cases a week, during the war?

The Witness: We averaged approximately fifty cases a week; that is on our Friday clinic.

Mr. Breen: Yes.

The Witness: Up to that we were running one hundred cases a week.

Mr. Breen: Yes.

The Witness: We had our personnel, a larger number of doctors working. Most of them went into the Army so we had to cut down the number of patients.

By Mr. Eardley:

Q. Doctor, is there one disease known as arthritis?

A. Arthritis is probably one of the most complicated diseases in medicine. In its ramifications it touches almost every field in medicine.

Q. Is there any special classification for arthritis?

501 A. There is. We have classifications, certainly, but arthritis,—in a discussion of a subject like arthritis, one must first of all understand that arthritis is a general systemic disease; it is not simply a disease of the joints; it is a system disease. There are manifestations,

we have a high leucocyte count, a high sedimentation rate; we have fever with the disease; we have changes in the blood condition; we have changes not only in the tissues and the joints, but in the soft tissues of the skin; the soft tissues; the tendons; bone; and we have many manifestations of the disease in other and various organs.

For example, the blood-making organisms are different in an arthritic patient than they are in the normal individual. The blood vessels are different. We have studied many of them and the blood vessels, and often the capillaries are contracted, they are not reactive similar to the ones in a normal individual.

There are changes in the bowel. There are changes in the liver itself. There are definite manifestations of change in approximately forty per cent of the cases. There are changes in the blood products. There are physiological changes in the gastric acidity in certain types of arthritis.

502 In certain types of arthritis, for example; about eighty per cent have—

The Court: Eight or eighty?

The Witness: Eighty.

The Court: You will have to talk louder.

The Witness: About eighty per cent.

The Court: And speak slower.

The Witness: Gastric acidity. You will find a lot of these lower in a certain type of arthritis.

You will find many physiological changes in arthritis. In other words, arthritis is a disease of many manifestations and there are many classes. There are many classifications, we divide arthritis into unknown etiologies, those that we do not know the exact organism.

Rheumatoid arthritis which is an entirely different thing occurring in younger people. It is entirely different from hypertrophic arthritis which is in old age and follows degenerative disease. It occurs in old age.

Then there are types of arthritis where the muscles are involved and not the joints and for that we use the word fibro-arthritis.

503 Then there is acute rheumatic arthritis which at times looks identical but are not identical with other types, because it is a type of similar disease and they look

identical, and it is only by very careful examination and a careful complete study that you can make a differential diagnosis.

Arthritis again—

The Court: Can't you talk slower?

The Witness: Arthritis may be associated with many other diseases. For example, arthritis may be associated with diseases of the blood-making organs. You find it in leukemia and you find it in pernicious anemia; and you have arthritis associated with various types of specific infections, such as streptococcus, staphylococcus, gonococcus, and various other infections, deriditis.

You will find types of arthritis that are apparently metabolic, such as gouty ochronosis. These are metabolic diseases and they are a different type of arthritis entirely.

Then you have arthritis which may be due entirely to trauma or injury; arthritis due to allergy, several allergic types of arthritis. And those manifestations may simulate

many diseases, like diseases of the central nervous system, and to enumerate them would be certainly, I think, beyond the scope of this discussion. They may simulate many diseases of the central nervous system, which I will not mention.

Multiple sclerosis. Many of them in their manifestations are common and identical with arthritis.

Then you have specific diseases of the bone itself which may simulate arthritis, synovioma. So you see when you are discussing or talking about arthritis, you are discussing diseases of various common manifestations and other diseases may simulate it very closely.

There is only one approach that I know of that is tenable. A study of your patient first, No. 1. And decide, has this patient arthritis.

If he has arthritis, No. 2, what type of arthritis has he, because they are of different antipathies.

And No. 3, if he has arthritis and you know the type, is any other disease associated with the arthritis, among those things which I have mentioned, such as acidity, and there are still many others.

For example, five consecutive cases which I had at Wesley, five of them had gall bladder disease. Forty per cent of the group I studied had definite liver damage.

505 I think in those who have arthritis there are probably three or four a year that run into lenticular carcinoma. Some of the patients in Wesley who have arthritis, have coincidentally sarcoma basal.

In order to arrive at any conclusion regarding arthritis one has to determine first those three different things I mentioned; first, is it arthritis; second, what type; and, thirdly, are there any other diseases associated with the arthritis. The only approach I know that is tenable is the original examination.

By Mr. Eardley:

Q. What procedure do you follow to find the type?

A. Check them thoroughly with the routine checkup which is very long and I don't know whether the Court would care to hear it.

The Court: Yes, go ahead.

The Witness: We study our patients from every viewpoint. First, a thorough physical checkup, and that means a thorough study of the individual. Then we do various determinations, blood chemical studies, and we do studies by X-ray pictures and an X-ray checkup; study the colon, bowel, gall bladder, by X-ray; study the various joints, and of course, we do a biological study which is a very careful
506 ful chemical study of the blood, kidneys, and so on.

After we determine that the patient has arthritis, we determine the type of arthritis and eliminate all possibility of any other complicating disease that may be present in that individual.

By Mr. Eardley:

Q. Doctor, I will show you Government Exhibit 1, which has already been identified, and Government Exhibit No. 8A, which has already been identified; and I will show you Government's Exhibit 2, which has already been identified; and I show you Government's Exhibit 3, for identification, Government's Exhibit No. 4A for identification, Government's Exhibit 5, all of which have been identified, all of these exhibits you now hold all have been identified. Government's Exhibit 6 has already been identified. Government's Exhibit 7, which has already been identified; and also the exhibits have all been admitted in evidence, Doctor.

Now, Doctor, assuming a product called Minerals-Plus; and assuming further:

"Minerals-Plus. Chlorophyll and Vitamin D. Con-

507 tains dicalcium phosphate, iron sulphate, irradiated yeast, potassium iodide, chlorophyll, alfalfa, sulphates of copper, cobalt, manganese, zinc, magnesium and nickel, magnesium trisilicate, lithium lactate, chlorides of sodium, potassium and strontium, sodium borate, sulphur, excipients to prepare. 100 Tabs. \$1.00."

Assuming further, Doctor:

"Lelord Kordel products, exclusive distributors, Chicago.

"Minerals-Plus chlorophyll and Vitamin D. Six tablets daily furnish

Calcium	750 milligrams
Phosphorus	580 milligrams
Iron	30 milligrams
Iodine	0.2 milligrams
Copper	150 micrograms
Vitamin D	600 U.S.P. Units
Chlorophyll	9 milligrams

plus 1 milligram of each of the following: Manganese, cobalt, sodium, sulphur, potassium, chlorine,—daily requirements for which have not been established. Plus magnesium, zinc, nickel, lithium, boron, strontium, silica, (barium—the need for which in human nutrition has not been established."

Assuming, further, Doctor:

508 "Directions: Six tablets furnish the following percentages of the minimum daily adult requirements: Calcium, 100 per cent; phosphorus, 75 per cent; iron, 300 per cent; iodine, 200 per cent; vitamin D, 150 per cent. Tablets may be chewed or swallowed whole, or crushed and added to fruit juices, milk, or other foods. In special cases use as directed by physician."

Doctor, assuming further:

"Lelord Kordel's specially-treated Sarsaparilla Root. U.S.P. with sassafras bark."

"Directions: To make a delicious and refreshing beverage, use 1 to 1½ teaspoonfuls for each cup of rapidly-boiling water. Steep 5 minutes. Strain. May be sweetened with honey to taste. A few drops of lime or lemon juice may be used."

Assuming, further, Doctor, a product known as Cetabs:

"Each tablet contains not less than 600 U.S.P. units

Vitamin C (30 milligrams ascorbic acid) and necessary excipients.

- 509 "One tablet furnishes the full minimum daily adult requirement for Vitamin C, which is 600 U.S.P. units. Where an actual Vitamin C deficiency is known to exist, larger amounts may be taken as directed by your physician. Tablets may be chewed or swallowed whole, or crushed and added to fruit juices, milk, or other foods."

Assuming further, Doctor, a product called "Lelord Kor-del's Fenugreek Tea."

"Consists of Fenugreek Seeds selected for purity and flavor."

Assuming further, Doctor:

"Directions for preparing: Use one tablespoonful for each cup of rapidly boiling water. Steep about ten minutes—longer if you wish a more pronounced flavor. Strain. May be sweetened with honey to taste. A few drops of lemon juice will further improve flavor."

Assuming further, Doctor, a product called Fero-B-Plex:

"Improved formula Fero-B-Plex. Vitamin B-Complex plus iron. Now fortified with calcium, phosphorus and copper."

- 510 "Contains high quality yeast fortified with thiamin, riboflavin, niacin, diacalcium phosphate, iron sulphate, copper sulphate and necessary excipients."

"Three Fero-B-Plex tablets contain:

Vitamin B-1 (thiamin)	1000 micrograms
Vitamin B-2 (riboflavin)	500 micrograms
Niacin (P-P Factor)	4500 micrograms
Iron (from iron sulphate)	45 milligrams
Copper (from copper sulphate)	50 micrograms
Calcium	150 milligrams
Phosphorus	120 milligrams

"Plus pantothenic acid, vitamin B6, Biotin and other B-Complex factors natural to high quality yeast."

"Directions: As a diet supplement, 3 tablets furnish the minimum adult requirement as follows: 100 per cent of Vitamin B-1; 25 per cent of Vitamin B-2; 300 per cent of iron; 20 per cent of calcium; 16 per cent of phosphorus. The exact need in human nutrition for niacin and copper has not been definitely established."

Tablets may be swallowed whole or crushed and added to milk or juices."

511 Assuming further, a product called Lelord Kordel's Bolax Laxative Tablets. The tablets "contains powdered T.V. senna leaves, uva ursi leaves, buckthorn bark, licorice root, red clover tops, coriander seed, elder flowers, pale rosebuds, peppermint leaves, African ginger root, fennel seed, Mexican saffron, aniseed, cyani flowers."

Assuming further, Doctor:

"Directions: 1 to 2 tablets. Children: One-half to two tablets or less in proportion to age. To avoid any possibility of forming the laxative habit, this preparation should be taken only when necessary. It should never be taken in cases of nausea, vomiting, abdominal pains and other symptoms of appendicitis."

Mr. Eardley: This is the same question, your Honor, in regard to the testimony in this book:

Now, counsel, do you want me to read the whole book or just the pertinent parts of the book?

Mr. Breen: I don't know right now. Let's see what you are going to ask.

Mr. Eardley: Well, it all has reference to the product which has just been mentioned, just applies to this product.

512 I want to ask, shall I read the whole book Judge?

Mr. Breen: Well, you read what you want to and we will see what we can say then:

I would suggest, your Honor, that we recess until two o'clock and let the Doctor read the whole book.

Mr. Eardley: The Doctor has already read the whole book, your Honor.

The Court: Oh, he has?

Mr. Eardley: Yes, he has.

The Court: Is that correct, Doctor, you have read the whole book?

The Witness: Yes.

The Court: Don't shake your head. The reporter has to get your answer.

The Witness: Yes, I have.

Mr. Eardley: It is in evidence.

The Court: Proceed with your question.

Mr. Eardley: All right.

Q. Doctor, I call your attention to Government's Ex-

hibit No. 8-A; have you read pages 17 and 18 in that exhibit?

A. Yes, sir.

Q. That is the booklet: "Nutrition Guide," is it 513 not, Doctor?

A. "Nutrition Guide," yes, sir.

Q. Doctor, assuming further the information stated in Government's Exhibit 1, with the directions for the tablets and their contents; do you have an opinion, based upon a reasonable medical certainty, and from your training, education and experience as to whether such product so used might be or could be effective in the cure, mitigation, treatment or prevention of any of the above-mentioned conditions, applying to, I will say, including the nutrition diet.— could it be effective in the cure, mitigation or treatment of arthritis?

A. I have.

Q. What is your opinion?

Mr. Breen: I interpose the objection here, your Honor, the same objection on that ground.

The Court: The objection is overruled.

Mr. Breen: Nothing in the label that he read or in the book that says it will accomplish that purpose.

The Witness: I have a very definite opinion. In the first place—

By Mr. Eardley:

Q. What is your opinion, Doctor?

A. I made it very clear that there is no specific 514 medication for arthritis. We do not know, we have no specific treatment for arthritis. We have to determine from our careful checkup that I mentioned, not only the type of arthritis that we are dealing with, but the general systemic condition of the individual. And from that careful checkup we determine the type of treatment that will suit that individual case.

There is no disease in medicine where you individualize like you do in the treatment of arthritis. No two cases are identical. Nor can you set up any rule that you can specify for any particular group. You must individualize in the treatment of each case. (It is important you do that.

I would say from what you have already said, would it probably prevent, I want to say I do not believe there is

anything in this formula you read that would be particularly curative, in the first place, in the treatment of arthritis.

Q. Doctor, referring now to Government's Exhibit 1, Page 5:

"Instead of coffee, drink Lelord Kordel's Sarsaparilla Tea."

Would that in any way help cure, mitigate or relieve the condition of arthritis?

515 Mr. Breen: I object to that.

The Court: Overruled.

The Witness: No, I do not believe it would.

By Mr. Eardley:

Q. Why, Doctor?

Mr. Breen: I think the whole paragraph should be read. You are just taking the footnote.

Mr. Eardley: The Doctor has already read this exhibit.

The Witness: In regard to uric acid, you are referring to. The acid idea in arthritis originated probably long ago, and has been thrown in the ash can probably.

Mr. Breen: Your Honor, this is a hypothetical question and I think the Doctor should have it presented to him.

The Court: You mean the whole paragraph?

Mr. Breen: The whole paragraph.

The Court: All right. Read that whole paragraph.

By Mr. Eardley:

Q. "But, getting back to the dietary causes, we find a greater abundance of factors, and ones that are not so much subject to conjecture. Here we find many of the arch villains in our life"—

Mr. Breen: Just a minute.

516 By Mr. Eardley:

Q. (Continuing)—"today; sweets, condiments, coffee, tea, alcohol and tobacco. With arthritis, carbohydrates"—

Mr. Breen: Where are you reading from?

Mr. Eardley: Page 5.

Mr. Breen: What?

Mr. Eardley: Page 5, the third paragraph there?

Mr. Breen: Read it again. You pronounced some of the words wrong.

By Mr. Eardley:

Q. (Continuing) "With arthritis, carbohydrates such as contained in candies and other sweet things should be avoided like the plague; all spicy foods, too, must be omitted from the diet. It goes without saying that alcohol and tobacco—both of which are blood toxicants—must be eschewed. For this acid condition of the blood is one of the main contributing factors in cases of arthritis. Certainly, purity of the blood stream has been preached for so long now that it is surprising that one has to go on talking about it. And coffee"—

And I will skip to the footnote:

517 "Instead of coffee, drink Lelord Kordel's Sarsaparilla Tea. All health food stores carry it. If you must drink some coffee—and arthritics shouldn't—learn to drink it without sugar or cream, and add a few drops of lemon juice to it in order to neutralize harmful elements."

"And coffee is another thing which leads to such a state—particularly if drunk with cream and sugar—for the caffein contained therein, if consumed to excess, is converted into uric acid, which in turn affects the blood when present in quantities."

Now, Doctor, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the cure—

Mr. Breen: What is the name of the product?

Mr. Eardley: Lelord Kordel's Sarsaparilla Tea and all of the other products.

The Witness: I have.

Mr. Breen: As to Sarsaparilla Tea, your Honor, I object; it is nowhere referred to in the paragraph as a cure for arthritis.

518 The Court: Is it in there?

Mr. Eardley: It is, sure.

The Court: Read it. Read that sentence, read the sentence in which it is.

Mr. Eardley: It refers to the sub-note:

"Instead of coffee, drink Lelord Kordel's Sarsaparilla Tea. All health food stores carry it. If you must drink some coffee—and arthritics shouldn't—learn to drink it without sugar or cream, and add a few drops

of lemon juice to it in order to neutralize harmful elements."

Mr. Breen: Where does it say it will cure?

The Court: Well, as the question is phrased now, you may answer.

A. The theory that arthritis had something to do with acid increase—

Mr. Breen: Keep your voice up.

A. I say, that theory absolutely has been thrown in the ash can long ago.

The Court: What theory?

The Witness: The theory or the idea that acid has anything to do with uric acid, the uric acid idea in arthritis,—most people thought arthritis and gout were the same disease. Arthritis and gout are not. We know they are not identical. One is primarily a metabolic disease and the other is a different type of systemic disease entirely. And in the field of uric acid in arthritis, we have done a study of some four hundred and published the results, and they stood at a normal level regarding diet of these individuals, on the regular diet, the food they had been eating, these people with blood uric acid remained at a level of 1.3. You cannot determine the diet for an individual case until you have studied it. I tried to make that clear.

Mr. Breen: Your Honor, this witness will take some time. May we recess until 2 o'clock? I have an appointment.

The Court: You should like to get away?

Mr. Breen: Yes.

The Court: All right, the Court will recess until 2 o'clock.

(And Thereupon, the Court recessed to reconvene at 2 o'clock p.m. of the same day, Wednesday, March 20, 1946.)

520

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Before Judge Walter J. LaBuy.

Wednesday, March 20, 1946, 2 o'clock p.m.

Court convened pursuant to recess.

Present:

Mr. Robert C. Eardley,
for the Government;

Mr. James W. Breen,
for the defendants.

• • • (Consolidated Cause—45 CR 488) • • •

Mr. Eardley: I wish at this time to offer a stipulation which has been formally drawn and agreed to by the parties.

The Court: Any objection to that?

Mr. Breen: No.

The Court: Very well.

(Said stipulation was marked Government's Exhibit A.)

521 DR. DAVID E. MARKSON, called as a witness on behalf of the Government, having been previously sworn, resumed the stand and further testified as follows:

Direct Examination by Mr. Eardley (Continued).

Q. Doctor, referring to Government's Exhibit No. 1, "What you can do about relieving the agonies of arthritis by Lelord Kordel";

Assuming, Doctor, the question propounded to you before, including the product and the directions of use, and their contents and the contents of the booklet on diet;

And assuming further, Doctor:

"Practical and helpful advice for the millions who suffer from arthritis. Clearly and simply written by America's leading vitamin and diet expert. It tells you how you may use diet and vitamin (among other suggestions) to help speed relief and make life pleasanter for yourself."

Now, Doctor, keeping all of these things in mind, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether those products so used might or could be effective in the cure, mitigation, treatment or prevention of arthritis?

A. I have.

Q. What is your opinion?

A. I will restate my—

Mr. Breen: Louder. I cannot hear.

The Witness: I want to restate—

The Court: Now, Doctor, I don't want to keep telling you. I have told you four or five times. You must speak louder, and you must speak more slowly. You speak so fast the reporter cannot catch your words, and you use all of these scientific words, you will have to spell some of them. You will have to talk louder so all of these people can hear you.

The Witness: All right, Sir.

I just want to restate, as I stated this morning that we have no specific cure for arthritis, nor have we any specific diet. It is assumed by all the men in the field of arthritis, there is a diet for the arthritis patient after you have had an opportunity to check up the type, as I stated and emphasized this morning. There is no diet for arthritis in general. There are many factors, and many of these products mentioned in there, for example, Vitamin D is dangerous in sufficient amounts.

Barium might be dangerous.

There is no specific diet for arthritis unless you determine one after very careful checkup.

For example, hydrochloric acid, hydrochloric acid from iron, the amount of iron you can get in there is small, in the first place; and Vitamin D, you cannot absorb it unless first there is a bile flow.

In other words, you must determine from the patient what he needs in the form of diet, and what he needs in the form of therapy. You cannot generalize, you cannot treat arthritis by any gunshot formula or any specific formula, because we haven't any such thing. We can treat patients who have arthritis after we study them and know the facts in the specific case.

By Mr. Eardley:

Q. Doctor, assuming all the products that you have there before you, and again referring to Government's Exhibit 1, "What you can do about relieving the agonies of arthritis," and referring now to page 6, the first paragraph:

"Still another case of rheumatoid arthritis has been found perhaps one of the most important factors among the many given; disturbed nutritional metabolism, which is brought about by a deficiency of cal-

cium, phosphorous, and vitamin D and other essential minerals. As the calcium and phosphorus have been taken from other parts of the body to build up the calcareous deposit between the two bones that form the joint, there is an uneven distribution of the two elements in the rest of the body. The other bones and the blood have been deprived by nature of their calcium in order to bring about immobility—hence some supposed degree of ease—in the grating joint, and this must be reintroduced by the consumption of calcium and phosphorus-bearing foods.”

And referring to Note 2:

“For a reliable source of calcium-phosphorus-Vitamin D, try Minerals-Plus, which contains the two minerals mentioned plus 17 others in addition to Vitamin D and Chlorophyll.”

“This will be taken up in fuller detail later on, when the specific foods will be mentioned.”

Now, Doctor, keeping all these products in mind, and the diet and the other exhibit, Nutritional Guide, do you have an opinion based upon reasonable medical cer-
525 tainty, and from your training, education and experience, as to whether such products so used might or could be effective in the cure, mitigation, treatment or prevention of arthritis, and specifically rheumatoid arthritis?

A. I do.

Q. What is your opinion?

A. My opinion is, we have done probably a thousand blood calcium levels, and we found that—

Mr. Breen: Please speak louder.

The Witness: We have probably done as high as a thousand calcium levels with different patients who have rheumatoid arthritis, and we find the blood calcium level maintained at a level low normal. While in hypertrophic arthritis it may be a high normal.

Furthermore, calcification in rheumatoid arthritis rarely or never is shown—in rheumatoid arthritis the test number is from 20 to 40, and these patients go on into 40 or 50, and they may have calcium in their joints. That is one of the manifestations of degeneration which occurs in later years, not in the young.

All the calcium treatment given by mouth, or given internally, unless mobilized, probably may have no ef-

524 feet. Moreover, some interesting work was done in 1939 before the medical students on calcium levels, and it was found these patients will maintain themselves at a normal level regardless of the diet, and reenforcement of the diet does not mean anything unless it is properly mobilized, unless the calcium is properly mobilized.

Q. Doctor, assuming the product you have already seen and which have been identified; and assuming further, Doctor, referring to Government's Exhibit 1, page 6, second paragraph:

"Lack of Vitamin C has been claimed, by some authorities, to have a bearing on arthritis cases. This, too, affects the bone development, and provides increased resistance to infection, so it is an important element in the course of treatment."

Doctor, keeping that in mind, and referring to page 10, the last paragraph:

"Thus the diet for arthritis is one in which all devitalized products"—

Mr. Breen: Where are you reading from?

Mr. Eardley: Pardon me, I am sorry, let that be stricken.

527 Referring to Page 10, the last paragraph:

"Vitamin C, whihe is so necessary to the bone development and for healthy skeletal structure after it has finished developing, is also imperative. This may be obtained in large quantities in orange, grapefruit, lime and lemon juice; in tomatoes and most leafy green vegetables and fruits. But fresh fruits and vegetables often do not furnish all the vitamin C needed by the arthritic. If you think you are not getting enough Vitamin C, we suggest a Vitamin C concentrate in tablet form. An excellent one is called 'Cetabs.'"

Now, Doctor, keeping all of those facts in mind, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation, treatment or prevention of arthritis?

A. I have.

Q. What is your opinion?

A. My opinion is that nobody has clearly shown that Vitamin C, substitution of Vitamin C is going to have any effect whatsoever in the treatment of arthritis.

528 There may be a few who lack C as a substitute to their regular diet. We have checked for vitamin C level in rheumatoid type of arthritis, and we find they have a level of low normal count, low normal in rheumatoid and high normal in the other types, and those patients who get an adequate diet do not need the reenforcement of any of those vitamins, in the average case, assuming you get an adequate diet, you do not need the extra reenforcement of any of these vitamins.

Q. Now, Doctor, assuming the product that you have there—

Mr. Eardley: May I ask counsel again, do you want me to refer in all of my questions to the product in the hypothetical question as to his training, education and experience, so we can just go through the book that way? Just refer to the paragraphs and ask the doctor to comment on them?

Mr. Breen: I think he should specify the products.

Mr. Eardley: It will refer to all of the products, Mr. Breen.

Mr. Breen: Well—

Mr. Eardley: We will continue to refer to all of the products in every one of our questions.

Mr. Breen: Refer to them one by one.

529 Mr. Eardley: We are referring to them all at the same time in all of our questions, Mr. Breen. This is merely to avoid giving the hypothetical question, that it all.

Mr. Breen: I guess you can describe them altogether.

Mr. Eardley: All right.

Mr. Breen: Then in cross examination I can go into it.

Mr. Eardley: Does that meet with the Court's approval?

The Court: Yes.

Mr. Breen: Of course, it is understood for the record I am objecting to all of this and you are reserving the ruling to the end.

By Mr. Eardley:

Q. I am reading now from paragraph 4 of page 7:

"This will all help to build the body's resistance to the infection. And, as has been stated above, the person who is overweight should reduce, while the thin one should try to put on pounds. Since anemia is another thing to be considered when trying to overcome arthritis, the individual should see to it that his diet contains plenty of iron-bearing foods, such as apricots, raisins, prunes, broccoli, beet greens, chard, egg yolks, dried lentils, mustard greens, turnip greens and water cress. Plenty of these will build up the hemoglobin to normal, thus preparing part of the way. An iron-rich supplement is also recommended."

And sub-note 3:

"Fero-B-Plex is an excellent iron-rich B-Complex supplement."

Will you comment on that statement?

A. The use of iron; of course, iron will not, as I stated before, anywhere up to eighty per cent—

Mr. Breen: Keep your voice up.

The Witness: There may be a percentage, in other words, a percentage of approximately eighty per cent lack of hydrochloric acid entirely, including a group like hydrochloric acid will have very little acid and the iron will not be absorbed unless these patients have a normal adequate hydrochloric acid content in the stomach, and all the iron you give will be thrown out absolutely. It won't be used, no matter how much iron you give, unless the patient has an adequate amount of hydrochloric acid in the stomach.

Some of these patients may have an iron deficiency as in anemia, but the iron is not absorbed for the reasons 531 I have stated:

By Mr. Eardley:

Q. Will you comment on that fact as to thin persons and fat persons?

Mr. Breen: I do not think that form of question is proper, to ask him to comment.

The Court: Sustained.

Mr. Eardley: Strike the question.

By Mr. Eardley:

Q. Doctor, now referring to page 8 of the same exhibit, the first paragraph:

"One of the most effective preparations for a dietetic

treatment of arthritis is to stop eating entirely for awhile. This may sound ambiguous, but it is entirely sensible when you pause to consider the benefits to be derived therefrom. A day of fast completely frees the body of accumulated poisons and gives the specific arthritis diet clear ground in which to work."

Doctor, will you comment on that statement?

Mr. Breen: I object to the language and form of the question.

The Court: I will sustain the objection.

532 Mr. Eardley: Well, maybe I misunderstood counsel but I thought it was agreed that I would just ask the doctor to comment and give his opinion.

The Court: Your asking him to comment must apply to the literature.

Mr. Eardley: I will withdraw that question. Maybe I worded it poorly.

By Mr. Eardley:

Q. Will you give us your opinion—is that all right?

Mr. Breen: Has he an opinion?

By Mr. Eardley:

Q. Will you express your opinion?

Mr. Breen: Has he an opinion, is the first question?

A. Yes, I have an opinion.

By Mr. Eardley:

Q. All right. What is your opinion, Doctor?

A. The diet is absolutely absurd.

Q. Why, Doctor?

A. In the first place, these patients, the majority of them, have low proteins, their protein level is very low. We found an average of 5.5 in group cases. They need their full proteins, they need an adequate, well-balanced diet in proper proportions of carbohydrates and proteins.

There is no other diet suitable for arthritis except a
533 diet determined by a study of the patient as I have mentioned before. When the protein level is high, a diet of that sort will still depress still further the proteins and will cause some acidosis and that diet for a day, following that diet for 24 hours will probably increase the discomfort still more.

Q. Again referring to page 8, paragraph 2:

"So, with this in mind, the first step is to take a small dose of a mild laxative."

And referring to sub-note 4:

* "Bolax is recommended when you feel the need for a mild, yet not harsh laxative. Insist in getting Bolax, and refuse substitutes."

"when you go to bed the night before the day of the fasting. Taken with plenty of water, this flushes out all extraneous matter from the colon, but does not panic the peristaltic muscles."

Have you an opinion on that particular statement just read?

A. Will you re-read it? I did not quite get all of it?

Q. "So, with this in mind, the first step is to take a small dose of a mild laxative when you go to bed the night before the day of fasting. Taken with plenty of water, 534 this flushes out all extraneous matter from the colon, but does not panic the peristaltic muscles."

A. That is absurd. What does it flush out?

Q. Why?

A. Why does it flush out, and what does it flush, I would like to know.

There is only one that has really any clinical significance, and we have done research in histoma, and when you flush the bowels with colonic irrigation you destroy the protective mechanism and the more you destroy it the more toxic materials you carry in the system, the more toxic the patient becomes. We have work on that by Dr. Kendall in that toxic condition, and we have biologic proof that is correct. You destroy the protective bowel mechanism by flushing and you will destroy the mechanism which prevents other toxicants from being absorbed from the bowel.

Q. Now, Doctor, again referring to page 8:

"The following day, absolutely nothing should be taken into the system except pure distilled water. Drink as much of it as you can—a glass every hour. As it is distilled, it will gather up the unwanted impurities and undesirable mineral matter in the body. 535 But, as a great deal of calcium and other minerals will be excreted during the course of the day, it is best that you take at least six concentrated mineral tablets. This will preclude the loss of the minerals that are so valuable to the arthritic person: That night, again take some of the mild laxative, and get plenty of sleep."

Have you an opinion on this statement just made?

Mr. Breen: I object, in the entire paragraph there isn't a word said about the products of any kind.

Mr. Eardley: It refers to six concentrated mineral tablets. The mineral tablets have already been identified.

The Court: The objection is overruled.

Mr. Breen: If your Honor please, I submit, in this paragraph there is no reference to Lelord Kordel's tablets. This is a general statement, is all.

Mr. Eardley: The whole book is Lelord Kordel's shown on the front of the booklet.

Mr. Breen: That is not your question. You are asking about this specific paragraph.

536 The Court: If there is no reference in that paragraph to any of the defendant's products, then the objection should be sustained.

Mr. Eardley: Well, I believe I would like to call the Court's attention to the fact it refers to mineral tablets, and in this particular case if counsel will—

The Court: Has the defendant any product under the label "mineral tablets?"

Mr. Eardley: "Minerals-Plus." They have all been identified here, Exhibit No. 2.

The Court: If that is a fact, then I think the objection is overruled.

Mr. Breen: But they are not referred to, your Honor.

The Court: Will you read that sentence that embodies the word "mineral" in there?

Mr. Eardley: Yes, I will, Judge.

"But, as a great deal of calcium and other minerals will be excreted during the course of the day, it is best that you take at least six concentrated mineral tablets."

The Court: I will sustain the objection.

By Mr. Eardley:

Q. "The next day"—Doctor, this is another paragraph, and I am still referring to "What you can do about relieving the agonies of arthritis by Lelord Kordel,"
537 page 8, paragraph 4:

"The next day, a fruit juice diet is in order. The best one to follow is my Juice Purifying Diet. Here is the procedure for the Juice Purifying Diet:

"Night before: Two Bolax tablets."

And then you have a heading as to some nutrition guide as to the diet. And then keeping that in mind and skipping the chronology—

Mr. Breen: I think you should read it all in the hypothetical question.

Mr. Eardley: All right.

By Mr. Eardley:

Q. "Upon arising: Glass of distilled water with juice of one lemon.

"8 A.M.: Large glass of orange or grapefruit juice.

"9 A.M.: Glass of distilled water.

"10 A.M.: Large glass pineapple juice.

"11 A.M.: Glass of distilled water.

"12 Noon: Large glass of grape or apple juice.

"1 P.M.: Glass of distilled water.

538 "2 P.M.: Large glass of orange or grapefruit juice.

"3 P.M.: Glass of distilled water.

"4 P.M.: Large glass distilled water.

"5 P.M.: Glass of distilled water.

"6 P.M.: Large glass of grape or apple juice.

"7 P.M.: Glass of distilled water.

"8 P.M.: Large glass of orange or grapefruit juice.

"9 P.M.: Glass of distilled water.

"10 P.M.: Large glass of orange or grapefruit juice.

"Before retiring: Two Bolax Tablets."

Doctor, do you have an opinion as to the statement just read to you?

A. Yes, I have.

Q. What is your opinion, Doctor?

A. The diet is terribly unbalanced and lacks proteins.

Mr. Breen: Doctor, will you speak up?

Your Honor, I cannot hear a word he says.

The Witness: The diet is terribly unbalanced, it lacks protein, it lacks fat; and, furthermore, it has been well established in arthritis that a percentage, probably 539 as high as 20 per cent, tolerate carbohydrates over proteins. And the sugar tolerance given these individual arthritic cases, particularly in the advance stages, given the so-called sugar tolerance test, which is a test of the amount of sugar, embodies an actual test of the sugar measurement, shows that these individuals tolerate their

sugar very badly. The diet given here is lacking in proteins and it certainly disturbs the acid basic equilibrium which is shown in the diet.

By Mr. Eardley:

Q. Doctor, referring to Government's Exhibit 1, Page 13:

"Important: Many arthritics have reported wonderful results by using an herb tea that seems to be a splendid specific in helping arthritis and other rheumatic ailments. A cup should be drunk every other night—before retiring. Here is how to make this herb tea: Take one level tablespoonful of Fenugreek Tea and one level teaspoonful of Black Cohosh Root. Steep for five minutes in a cupful of boiling hot water. Strain. Sweeten with a teaspoonful of uncooked orange blossom honey; add a teaspoonful of lemon juice.
540 Drink while still quite warm."

Have you an opinion on that statement, Doctor?

A. I have.

Q. What is your opinion?

A. I do not know of any reference in the literature or anywhere that would indicate that would have any specific value in arthritis.

Q. Why, Doctor?

A. There is nothing, so far as I know, there isn't anything there that has any specific value.


Q. Doctor, now having in mind these products and the labels that have been read to you, and the two exhibits, pamphlet exhibits, could any of these taken singly or apart, or in combination, or in connection with a diet, have any effect on the cure, mitigation, or treatment of arthritis?

A. None whatsoever.

Q. Why, Doctor?

A. In the first place, coming back to the basic facts, one has to determine the type of diet and type of management in each individual case only after a careful investigation. Among the things that one has to go into, particularly in arthritis of the rheumatoid type, is a careful search for infection. They are not easy to do.
541 It is a hard job, it is a tiresome job, and must be gone into very carefully.

The fact you remove the tonsils or remove the teeth



is not sufficient to show that you have removed the infection which causes arthritis.

There are hidden foci of infection, the nasal, pharyngeal, in the abdomen and in the bowel itself. And in the male there are the male prostate and testes. In the female, particularly in the tubes and ovaries, one has to determine in a very careful checkup where the infections lie.

We used to remove the tonsils, as we have done and have shown in the very careful work we did with Dr. Kendall, you have to remove all the various number of organisms which we believe may be the exciting cause of arthritis, because there are the lymphs that remain in the throat and nasal cavities that are encased and impossible to get at. One has to go over this patient with all the cautions I have mentioned, to rule out, or determine what basic factor is in the background of these individuals before you can determine an adequate type of treatment, an adequate type of diet.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. Doctor, have you made a thorough study of Lelord Kordel's book on arthritis?

A. I have read it.

Q. Have you studied it carefully?

A. I have read it over.

Q. Did you read it over once?

A. I read it over once.

Q. You gave it no further study, did you? Is that right?

A. Well, I read it over once carefully enough to know what is in it.

Q. But you haven't given it any other study except reading it once, is that right?

Mr. Eardley: I object to that. I believe the witness has already answered that question.

The Court: Sustained.

By Mr. Breen:

Q. Have you met any of the people that are using Lelord Kordel products?

A. No, I have not.

Q. You don't know anything about their physical condition, do you?

543 Mr. Eardley: I object to that. It has no bearing, and immaterial.

Mr. Breen: It is cross examination, your Honor.

The Court: He may answer.

The Witness: To my knowledge, I have never met one. By Mr. Breen:

Q. Never met one. You don't know what kind of arthritis any of them had, do you?

A. I answer that by saying I never met one of his patients.

Q. Then having never met them, you don't know anything about their condition, do you?

A. I am talking, we are talking of—

Q. I cannot hear you. Speak louder.

A. We are discussing arthritis in general, which consists of many millions of arthritics throughout the world.

Q. And you answered in general, you said it was worthless?

A. That is right.

Q. And couldn't do anybody any good, didn't you?

A. I said that from what I know of scientific findings, there is no value to this type of treatment.

Q. But you don't know what kind of arthritis any 544 of the purchasers of these products had, do you?

A. I don't know.

Q. On what do you base your testimony that these diets and products are not effective in relieving the pains of arthritis as indicated and shown in this pamphlet?

A. There is nothing there, so far as I know from my knowledge and my knowledge of the literature, that would indicate there is anything in these products that should help these patients.

Q. Is your opinion on that point shared by all medical men?

A. Very much.

Q. Did you conduct any clinical tests to positively prove that these diets and products are not effective in the relief of pains of arthritis?

A. Various diets have been tested and reduced since 1910 by very many societies—

Mr. Breen: I move to strike it out.

Mr. Eardley: I object. I think the witness—

Mr. Breen: Limited to Kordel.

Mr. Eardley: He should answer the question.

The Court: Sustained. Not responsive to the question.
Read the last question.

(Question read.)

545. The Court: As to Kordel.

A. I never tested the product, I cannot say that.

By Mr. Breen:

Q. You never tested them. You have read this book through, Doctor?

A. I have.

Q. Will you tell me where in this book that you read that any of these diets or products would cure arthritis?

Mr. Eardley: I object to that. I believe that is the Court's prerogative.

Mr. Breen: No, he has testified.

The Court: He may answer.

A. I said specifically there is no cure for arthritis, no specific cure for arthritis.

Mr. Breen: I move to strike the answer.

Q. Point out in this pamphlet or book, Exhibit 1, on what page and in what paragraph does it say that Kordel products will cure arthritis.

A. It infers that, but I don't know of any reference, as a certain reference, I don't know it.

Mr. Breen: I move to strike out that part of the answer that it infers.

The Court: No, that may stand.

46 Can you point out any paragraph where you see—

The Witness: You have read it. Will you please reread it. I haven't got my glasses here.

Mr. Eardley: The Doctor hasn't his glasses with him, Judge.

The Court: All right, counsel will read that paragraph to him.

Mr. Eardley: "What you can do about relieving the agonies of arthritis?"

Mr. Breen: Relieving is not curing, your Honor.

Mr. Eardley: It further specifically says in the back of the book—

Mr. Breen: Give us the page number.

Mr. Eardley: Page 13. "Improtant."

The Court: Which paragraph is that?

Mr. Eardley: It is the last paragraph under "Important," it is the last paragraph, Judge.

The Court: You mean that heading?

Mr. Eardley: That is right, Judge.

Mr. Breen: All right, read what it says.

Mr. Eardley: "Many arthritics have reported wonderful results by using an herb tea that seems to be a splendid specific in helping arthritis and other rheumatic ailments.

A cup should be drunk every other night before resting. Here is how to make this herb tea: Take one level tablespoonful of Fenugreek Tea and one level teaspoonful of Black Cohosh Root. Steep for five minutes in a cupful of boiling hot water. Strain. Sweeten with a teaspoonful of uncooked orange blossom honey; add a teaspoonful of lemon juice. Drink while still quite warm."

The Witness: The word "specific," definitely means—
By Mr. Breen:

Q. Where does it appear, anywhere in connection with that paragraph he read, that this product will cure?

A. "Specific" means cure.

Q. What?

A. It uses the word "specific for."

Q. Isn't the title to this book, "What you can do about relieving the agonies of arthritis?"

A. The word "specific" here definitely used in that paragraph just read by the attorney.

Q. "Specific." Let us see where that is. It says:

"Many arthritics have reported wonderful results by using an herb tea that seems to be a splendid specific in helping arthritis and other rheumatic ailments."

Do you mean to say that says cure?

548 A. Specific really means that. I do not know how you can interpret it otherwise. If it is a specific, it means a curative.

Q. This book deals with helping the arthritic to cure himself. How can you say the word "specific" will cure?

A. As I just said, this says "specific."

Q. The word "specific" is here, but that should not be interpreted—

A. It could not be interpreted any other way.

Q. Doctor, would you say that medicine is an exact science?

A. Medicine is not an absolutely exact, but it is becoming more and more an exact science.

Q. Is it now an exact science?

A. It is becoming more exact.

Mr. Breen: I move to strike the answer out.

The Court: Sustained.

By Mr. Breen:

Q. Is it now a specific science?

A. I did not say that.

Q. Exact science?

A. It is becoming more and more an exact science.

The Court: Doctor, you heard the question. Can't you answer it directly?

549 Read the question, Mr. Reporter.

(Question read.)

The Court: Answer that, yes or no.

A. No, it is not an exact, absolutely exact science.

By Mr. Breen:

Q. Is it not possible, Doctor, that some other physicians might disagree with your theories and expressed opinions on this subject?

A. The opinions I expressed here are generally accepted opinions by men who are working with rheumatic diseases.

Q. You do not think any other doctor would disagree with you, do you?

A. It is within the realm of probability that someone will disagree with what you say.

Q. Isn't it true, Doctor, that in medical circles arthritis is treated by hit-and-miss, trial-and-error and experimental methods on patients?

A. That is not true.

Q. They do not do a lot of guessing, do they?

A. They do not. I did not say that. I said there was only one approach, and I have emphasized it over and over again. A thorough study of the patient. We do not treat arthritis, we treat the individual who has arthritis.

550 Isn't it true, Doctor, that medical science has found no cure for arthritis?

A. I mentioned that. I mentioned that in my opening statement, we have no specific treatment for arthritis.

Q. And that they resent any outsider as an intruder who might try to benefit people with arthritis?

A. That is not true at all. We will take advice from anyone who will show us they can do something for arthritis, we are quite willing to accept it.

Q. How many patients have you treated, Doctor, for arthritis?

A. I mentioned I started in 1924 seeing approximately 100 cases a week, at my clinics, for a period from 1924 until the war began.

Q. What were your results on those cases?

A. Results?

Q. Yes.

A. One may say, obtaining results assumes a result and that is a little difficult, but one can say in general that there are approximately, well, you would have to take a general period of survey, a period of years, there are 20 per cent of the individuals that we could not help very much. There is another 20 per cent that may be helped considerably, and 60 per cent that might be helped 551 a lot.

Q. How many different therapies or treatments for arthritis are there, Doctor?

A. That question cannot be answered directly, but it has been estimated somewhere between 100 and 500.

Q. Are you acquainted with the gold therapy for arthritis?

A. I am.

Q. Have you used it?

A. I have used it.

Q. What results did you have, Doctor?

A. The results, we have used it on approximately 250 patients. The results are very, very variable. The trouble is that the gold treatment is awful dangerous.

Q. Are you acquainted with the high Vitamin D therapy?

A. Yes.

Q. Have you used it?

A. We have used it, and have done some research on it.

Q. What results?

A. The results are dangerous, as I said. We have demonstrated with patients who have had the calcification in the muscles, their muscular system, and have used Vita-

min D. The general trend of opinion of the men working with arthritis is that all concentrated Vitamin D's are dangerous.

Q. Are you acquainted with the B therapy?

A. I am.

Q. Have you used it?

A. I have heard of it.

Q. What were the results?

A. Here, too, you have something that is very dangerous, very toxic. Some patients are allergic to B vitamins. We have found in some instances the patients have a form of swelling about five times normal, and they have had gangrene; a very dangerous method of therapy.

Q. With so many different therapies, Doctor, for treatment arthritis, would you not say that most medical men are in disagreement as to arthritis treatment, and that methods used by physicians are largely experimental?

A. No, I come back to my original thesis.

Q. Will you keep your voice up?

A. I said, I come back to my original thesis. We are not treating arthritis; we are treating the patient who has arthritis, and when we treat the patient intelligently it is from our findings.

Q. Would you not say, Doctor, based on most medical work, that diet seems to be always recommended by physicians?

A. You are speaking specifically of arthritis?

Q. Yes.

A. Diet, I have said and restate, there is only one diet for an arthritis patient, and that is a well-balanced diet suited to the individual, what he needs after you have determined the type of diet he needs. You cannot predetermine diet for an arthritis group, arthritis patients, until you know all the factors that go into that patient.

Q. Doctor, isn't it true that as a medical man you are naturally prejudiced against any treatment for the relief of arthritis that does not fall within the realm of orthodox medicine?

A. That is not true at all, because we have adopted even a few procedures from the osteopaths. We will adopt any method which will prove of benefit to the patient. Our first objective is to be able to relieve the patient of his suffering, that is the big objective, and we will take any-

thing from anybody who can show it is more scientific and has been used in their practice.

Q. Doctor, are you in sympathy with the nature cure movement that relies on diet and vitamin and herbs for 554 the treatment of diseases?

A. No.

Q. Why?

A. I do not think it is scientific at all.

Q. What makes you say that, Doctor?

A. I would have to see it in some scientific publication, because I know any individual patient can—

Q. Are you prejudiced in favor of medical men when you testify?

A. Well, I suppose that would be natural, being a doctor and having gone through medical school. I would not say I was prejudiced but I am opinionated.

Q. For that reason you would not recognize Lelord Kordel's products, would you?

A. No, not because they are Lelord Kordel's or anyone else's, but from an analysis of the materials presented here I give my opinion.

Q. Doctor, how would you explain the fact that people who purchased Lelord Kordel's products and followed his diet, experienced relief which physicians could not give them?

A. There are two explanations that I could give for that without knowing the patients. One is that there is an element of psychotherapy in this material, and the 555 patient is kept so busy with his diet he cannot think of anything else but his diet. It is pure psychotherapy.

Q. Is it not of importance?

A. It has its place but that is not the treatment for arthritis.

Q. But then you will concede such a person has been helped and not injured, will you not?

A. I would like to see the patient and check him before I could give an answer to that. I would like to see the patient.

Q. Generally speaking?

A. I would not accept anybody's opinion on what constitutes improvement or cure until I see the patient. These people, these people made scientific studies and investigated it.

Q. Could any person be harmed by using these products or following the diet suggested here?

A. There are a few products, such as Vitamin D, that are dangerous. We have very absolute proof.

Q. Vitamin D has not been recommended by anybody, has it?

A. 600 units I saw in one.

Q. That is not a very large quantity?

A. It is not very large but if continued long enough
556 it could be dangerous.

Q. How long, Doctor?

A. A question of months.

Q. All right. What do you think of Dr. Bernard Comroe's monumental book on arthritis?

A. I know it.

Q. What?

A. I am familiar with the book.

Q. What do you think of the book?

A. Is it a good survey on the subject, a fair survey.

Q. You say you have seen Dr. Comroe's book, have you?

A. Yes, I have.

Mr. Breen: I will ask that this be marked Defendants' Exhibit 3, for identification.

(Said book was marked Defendants' Exhibit 3 for identification.)

By Mr. Breen:

Q. I will ask you, Doctor, to look at it.

A. I have the book. I know it very well.

Q. Now, Doctor, on page 394 of Dr. Comroe's book, he says that arthritis patients are benefited by extra iron.

Mr. Eardley: I am going to object unless the witness
has an opportunity to see the whole statement made
557 by the doctor.

Mr. Breen: I offered him the book and he would not take it. He said he is familiar with it.

Q. Do you want the book?

A. No, I don't want it, I answered that question twice. These patients, I said there are a group of certain individuals, and some patients do need iron, and they need hydrochloric acid but they cannot absorb the iron, but you must study them and give them the amount of hydrochloric acid they can absorb. Some of these patients need iron

and some do not. Again it comes back to the basis, you must examine your patient to determine what he needs.

Q. You haven't examined any of these patients that took Kordel's products, have you?

A. I have not.

Q. You do not know what their condition is, whether they can be helped by iron or not, do you?

A. I don't know that.

Q. Directing your attention to Exhibit 1, page 8. Doctor Comroe's book on Page 375 says on that page that the person who has arthritis should guard against constipation as should anybody else, and suggests the use of a laxative, does he not?

558 A. That is a very debatable point.

Q. Dr. Comroe in his book says that, doesn't he?

A. I do not remember that particular passage about the question of laxatives.

Q. Do you want to see the book?

A. No.

Q. Or examine the book?

A. I don't want the book, but the question of laxatives is a very debatable point, the type of laxative to use. You must see the patient to determine.

Q. What is a mild laxative, Doctor?

Mr. Eardley: I object to counsel interrupting the witness.

The Court: Let the witness answer. Complete your answer.

By Mr. Breen:

Q. Will you keep your voice up?

A. I will try to shout louder. Some patients may need a laxative but the majority do not. It is only after a careful bowel study that you determine the type of bowel that needs a laxative. Some of these patients have a spastic bowel. You have to determine by a careful examination which one needs it. You have to examine your patient.

559 By Mr. Breen:

Q. You haven't made that determination, have you?

A. I have not examined these patients.

Q. Have you made that determination in any person who purchased Kordel's products?

A. No, I have not.

Q. Isn't it true that an arthritis patient is benefited if he does not drink coffee?

A. There is no clear proof that that is true at all, none whatsoever.

The Court: How about alcohol?

The Witness: Alcohol? The question there, too, is a very debatable point. Alcohol, of course, is a mild vascular dilator. And Dr. Ivy from our Physiological Department and I made some studies with a mild alcoholic stimulant to see what the effect was. A vascular dilatation may have some effect but we have not done sufficient work on that. Of course, chronic alcoholism is a dilating disease which in itself is very bad.

The Court: What about smoking?

The Witness: Smoking, I imagine, is a very individual problem with the arthritic. Some of these patients, and I have done some scientific work on smoking, some are sensitive. For example, looking in the microscope you will find the destruction of the capillaries, and there are two or three where probably 12 should exist to be normal. When you see an individual smoking five or six cigarettes in a row, when they have arthritis, the blood cells decrease, but in general it is not harmful except in the individual case which you must determine.

By Mr. Breen:

Q. Doctor, would you say that a patient suffering from arthritis would be benefited if instead of drinking coffee he takes a delicious herb tea?

A. I don't know of anything, any reason why an arthritic could not drink coffee. I do not know of any sound scientific reason why he could not drink coffee if he wants it.

Q. Do not nearly all of these text writers in their books suggest that coffee be not taken?

A. No, not as far as I know, there is no reference to the use of coffee.

Q. Don't you think a herb tea could be used in place of coffee?

A. It would depend on the individual patient. I would rather take coffee if I were the patient.

Q. Doctor, have you found any statement in this book, Exhibit 1, that sarsaparilla tea would cure arthritis?

561 A. I cannot specifically remember that reference, if there is any, I do not know.

Q. Turn to page 5 where it appears.

Mr. Eardley: I object to that. I believe that is a question within the province of the Court.

The Court: Sustained, invading the province of the Court.

Mr. Breen: Q. Is there any statement in this book anywhere that sarsaparilla tea will cure arthritis?

Mr. Eardley: The same objection.

The Court: Sustained.

Mr. Breen: Your Honor, I think that is important. They have assumed that it would, and I want to know what they base that on.

The Court: I think it is the duty of the Court to determine the meaning of these paragraphs.

Mr. Breen: He is an expert, your Honor, and he has testified on that assumption and I want to show that there is no basis for the assumption.

The Court: Well, he says that it is implied, there is an implication there. You may ask him the specific paragraph and ask him wherein the implication lies.

By Mr. Breen:

Q. Where does that implication lie, will you turn 562 to page 5 and point out what paragraph has that implication?

A. You will have to give it to my attorney to specify where that specifically was used there.

The Court: The witness hasn't any glasses. Let the attorney read that paragraph for him.

Mr. Eardley: We do not confine the witness to one page, it is the whole booklet, your Honor.

Mr. Breen: You tell us in what part of the booklet it is, anything on that question.

Mr. Eardley: In regard to sarsaparilla tea?

Mr. Breen: Yes.

Mr. Eardley: It is the whole book by innuendo all the way through.

Mr. Breen: Your Honor, this is—

Mr. Eardley: That is still the province of the Court.

Mr. Breen: Your Honor, this is a criminal proceeding. In my opening statement I said that I thought this was

the first criminal prosecution brought under this particular section of the statute.

The Court: Well, that would be immaterial, Counsel.

Mr. Breen: But I still take that position, that it is.

Mr. Eardley: I can very quickly refer counsel to a 563 case tried right here in this district, right here in Illinois.

Mr. Breen: That is a case where it was—

The Court: All right, gentlemen, let's get down to the case on trial. The question, whether or not this is the first criminal prosecution is immaterial.

Mr. Breen: That is true. That is true, it is.

Q. Doctor, are you familiar with black cohosh root?

A. No.

Q. You are not. Then you are not familiar with all the herbs that are used for various conditions?

A. No, I am not familiar with all of them, I can say that.

Q. Do you think that herbs have some use?

A. It is possible within the realm of human possibility.

Q. Doctor, are you familiar with Potter's Cyclopedia of Botanical Drugs and Preparations?

A. I know of it, yes.

Q. Have you read it?

A. Not very carefully.

Q. What do you think of that book?

A. I have no opinion to give. I do not know the book very well.

564 Q. On page 97 of that book, Doctor, it discusses black cohosh, for example, for rheumatism. Have you ever read that page?

A. No, I have not.

Mr. Breen: That is all.

The Court: You are excused.

(Witness excused.)

The Court: The Court will recess for ten minutes.

(Recess.)

HARRY C. HOUSE, called as a witness on behalf of the Government, having been previously sworn, resumed the stand and further testified as follows:

Direct Examination by Mr. Eardley (Continued).

Q. Mr. House, you are the same witness who testified the other day in this case, is that correct?

A. I am.

Q. I will show you Government's Exhibit 10, for identification, and ask you if you have ever seen that before?

A. Yes, I have.

Q. Where did you receive that, Mr. House?

565 A. In a shipment received early in March, 1945.

Q. Who did you receive it from?

A. It came from some publishing house in Chicago.

Q. Who did you ask to send that to you?

A. Lelord Kordel.

Q. Referring to the back of that exhibit, is there anything unusual about that particular exhibit, Mr. House?

A. Well, it bears this here rubber stamp.

Q. Who placed that on there, do you know?

A. Some of our employees.

Q. Under your direction?

A. Yes.

Q. Why did you have that rubber stamp placed on there?

A. So that the customers might not drop it in the mail of their own accord.

Q. Where did you have that particular pamphlet and other pamphlets in your store?

A. I beg your pardon?

Q. Where would you have that in your store, where did you have it?

A. We would have it on the sales counter and at the juice bar.

Q. Would you take this pamphlet or other pamphlets similar to that and wrap it up when you made a sale?

A. Yes, we would, or hand it to a customer.

The Court: Would you or did you?

A. Yes, we have.

By Mr. Eardley:

Q. When you made a sale of Kordel's products, you would do the same thing, is that correct?

A. That is true.

Q. Did this particular pamphlet come from the shipment you just referred to?

A. Yes.

Q. Was that particular pamphlet collected by Inspector McKinley?

A. Yes, sir, it bears his initials.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. Is that pamphlet in the same condition now as it was when you received it in your store the first day?

A. No.

Q. What change was made in it?

A. We pressed our rubber stamp, our name on it.

Q. Before that rubber stamp was put on there, what 567 appeared under that rubber stamp?

A. Well, our mailing permit number.

Q. Your mailing permit number?

A. Yes, sir.

Q. When that was sent to you, it came through by interstate commerce, it was sent to you to be mailed out, wasn't it, with your mailing permit number on?

Mr. Eardley: I object, immaterial.

Mr. Breen: It is not immaterial.

The Court: He may answer.

A. That was the purpose or intention, but at any time we thought the people were interested, we offered it to customers over our counter.

By Mr. Breen:

Q. When it had the post office permit on there, didn't you know you could not give it to people over the counter?

Mr. Eardley: I object, immaterial.

A. No.

The Court: Sustained.

By Mr. Breen:

Q. You put that rubber stamp on after you received it, didn't you?

A. Yes.

568 Q. And that rubber stamp was put on where, what city?

A. Seattle.

Q. In Seattle in the State of Washington. And it was put on by you after you received it?

A. True.

Mr. Breen: That is all.

Mr. Eardley: That is all, Mr. House.
(Witness excused.)

DR. MARGUERITE META KUNDE, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. Will you state your name, please?

A. Marguerite Meta Kunde.

Q. Where do you live?

A. My apartment is 747 North Wabash. My office is at 30 North Michigan.

Q. Are you a licensed physician, licensed to practice medicine and surgery in the State of Illinois?

A. I am.

Q. Doctor, what if any education did you have to prepare yourself for your profession?

569 A. I have two degrees from the University of Nebraska, from the State University of Nebraska. Bachelor of Arts conferred in 1917 and Bachelor of Science conferred in 1919. I have a Doctor of Philosophy in Physiology from the University of Chicago, conferred in 1923. A Doctor of Medicine from Rush Medical College, conferred in 1925.

Q. Doctor, after you finished your medical training, did you serve an internship?

A. I did.

Q. Where did you serve your internship?

A. At the Billings Memorial Hospital in connection with the University of Chicago.

Q. How long was this internship?

A. One year.

Q. What did you do, Doctor, after you completed your internship?

A. I continued in the University of Chicago in the capacity of a graduate research student, and a staff member in the Department of Medicine.

Q. Who did you work under while you were doing this research work?

A. I worked primarily under Dr. Carlson.

Q. What did your specialized work consist of?

570 A. It consisted primarily in research in the glands of internal secretion; ductless glands and nutritional physiological and mental processes.

Q. How long did you continue this specialized work?

A. I began this as soon as I came to the university which was in the fall of 1919, and I continued on in that capacity at the University of Chicago until 1932.

Q. What did you do after—

A. Twelve years.

Q. What did you do, Doctor, after you completed this specialized training?

A. Continued on in medical teaching, clinical teaching and the practice of medicine.

Q. Were you specializing in any field in the practice of medicine?

A. I limit my practice primarily to endocrinology.

Q. What if any training have you had in nutrition?

A. Under Dr. Carlson during the twelve years of my postgraduate training we worked continuously on problems either in nutrition, physiology, medicine or endocrinology.

Q. Have you prepared any papers in these fields, Doctor?

A. Yes. I published 26 original articles of research
571 in these fields.

Q. Were they published in scientific magazines?

A. They were. They were published in the *American Journal of Physiology*; *Journal of the American Medical Association*; the *Proceedings of the Society of Experimental Biology in Medicine*; *Illinois State Medical Journal*. I think that is all.

Q. Are you associated with any school at the present time?

A. Yes. I am on the staff at Northwestern University Medical School.

Q. What are your duties on the staff at the Northwestern University Medical School?

A. I have an endocrine clinic Tuesday morning.

Q. Are you teaching students in that particular capacity, Doctor?

A. Yes, teaching students and treating patients.

Q. Are you associated with any hospitals, Doctor?

A. Yes. I am on the staff of the Wesley Memorial Hospital; also have a clinic at the Cook County Hospital, and at the Chicago Maternity Hospital.

Q. What is the clinic at Cook County Hospital?

A. Out patients endocrine clinical.

Q. What does that work consist of?

572 A. Treating patients who have been referred to the clinic from the State Medical Clinic who seem to have disturbances involving the glands of internal secretion.

Q. Are you a member of any societies, Doctor?

A. Yes. I am a member of the American Medical Association. I am a Fellow of the American Medical Association of Iowa; a member of the Illinois State Medical Society; the Cook County Medical Society; the Society for Experimental Biology in Medicine; the Chicago Society of Internal Medicine; Sigma Xi; American Physiological Society; the American Society for the Study of the Glands of Internal Secretion.

Q. What if any specific requirements are attached to any of these societies, Doctor?

A. Yes. In order to obtain membership in the American Society of Physiology, you must have done and have had published original research work in physiology and in medical science. The same holds in order to become a member of the American Association for the Study of Internal Secretions, and, of course, to be a member of Sigma Xi means that you had distinguished yourself for meritorious scientific work while a university student.

Q. Doctor, I will show you Government's Exhibit 573 12, for identification; also Government's Exhibit 10, which is in evidence.

Doctor, now, assuming a product called Cetabs:

"Label: Each tablet contains not less than 600 U.S.P. units Vitamin C (30 mg. ascorbic acid) and necessary excipients."

Assuming further, Doctor:

"One tablet furnishes the full minimum daily adult requirement for Vitamin C."

Now, Doctor, referring to Government's Exhibit 10, page 16, column 3, paragraph 3 in the exhibit: "Health Today, Spring 1945":

"Vitamin C and hormones."

The Witness: That is in Column 3? Does it say here—

By Mr. Eardley:

Q. The heavy print, Doctor, "Vitamin C and hormones."

A. I have it, thank you.

Q. Now, Doctor, assuming further:

"Recent research reveals that one of the functions of Vitamin C is that of aiding in the synthesis of the adrenal hormone known as corticosterone. A deficiency of Vitamin C in the adrenal glands has been shown to cause a reduction of 9/10 of the amount of hormone 574 formed by this gland. In severe cases, manifestations of this deficiency may include a bronzing of the skin, a rise in potassium of the blood, a serious loss of water in the skin and tissues, impaired kidneys, loss of body salt (sodium chloride), muscle weakness; abnormally low blood pressure."

Now, Doctor, with all of those facts in mind, do you have an opinion, based upon reasonable medical certainty and from your training, education, and experience as to whether or not such a product so used might or could be effective in the cure, mitigation, treatment and prevention of the disease mentioned above?

A. I have.

Q. What is your opinion, Doctor?

A. Definitely could not cure those symptoms mentioned in this paragraph.

Q. Why, Doctor?

A. These are symptoms which are primarily found in a serious disease of the adrenal gland; the symptom is known as Addison's disease. No amount of Vitamin C has ever in any way ameliorated the symptoms of Addison's disease.

Q. Could this have any effect on the mitigation and 575 treatment of the conditions just mentioned?

A. It could definitely not.

Q. If you are asked why, will your answer be the same?

A. I could refer you to volumes of scientific literature which shows convincingly that Addison's disease is not cured by Vitamin C.

Q. Doctor, would this help retarded growth?

A. Is your question, would retarded growth be helped by Vitamin C?

Q. That is right.

A. Definitely not.

Q. Why?

A. Retarded growth depends primarily on three factors: One, the proper functioning of the thyroid gland; second, the proper functioning of the anterior pituitary; and, third, a well-balanced nutritional condition.

Q. Doctor, I will hand you Government's Exhibit 13A—

The Court: The Court will recess for a few minutes. (Recess.)

The Court: Proceed.

By Mr. Eardley:

Q. Doctor Kunde, assuming a product called Ormatabs.

"Label: Contains sarsaparilla root extract (41), kelp, sassafras bark, papain, chlorophyll and excipients. 576 ients."

Assuming further, Doctor:

"Directions: As a dietary supplement, for experimental use, two tablets provide approximately 200 per cent of the daily adult requirements for iodine, together with sarsaparilla root, sassafras bark, papain and 20 milligrams of chlorophyll."

Doctor, referring to Government's Exhibit 10: "Health Today, Spring of 1945," page 8, column 3, paragraph 3—do you get the paragraph number, paragraph 5?

A. I have the paragraph.

Q. "Chlorophyll has proved its great value as a treatment in case after case of nervous fatigue, tubercular infections, acute diseases, under-development in children, etc."

Doctor, keeping all these facts in mind, do you have an opinion, based upon a reasonable medical certainty and from your training, education and experience, as to whether such a product so used might or could be effective in the cure, mitigation or treatment of undeveloped children?

Mr. Breen: I object to that.

The Court: On what ground? Is this your general
577 objection?

Mr. Breen: Yes. And my specific objection is there
is no mention of the growth of children in this paragraph.

By Mr. Eardley:

Q. The mitigation, treatment or prevention of fatigue
and underdevelopment of children.

The Court: Objection overruled. She may answer.

Mr. Breen: The same objection because none of those
elements are referred to at all.

By Mr. Eardley:

Q. Do you have an opinion, Doctor?

A. I do have.

Q. What is your opinion?

A. It has no nutritional or curative value whatever.

Q. Why?

A. Chlorophyll is not utilized by the human body. It
does not enter into the metabolic processes of the human
body. It is one of those things found abundantly in the
green coloring matter of plants and is eaten with the plant
food but does not become a part in any way of the human
body cells; nor is it metabolized by the body.

Q. Keeping in mind the product that has been men-
tioned, with its label mentioned in the previous ques-
578 tion, and referring now to page 9 of Exhibit 10 and
over in the right-hand corner:

"Past 40! And growing old too soon! Try Armo-
tabs, the nutritional adjunct for men and women past
40, and forget your troubles."

Now, Doctor, do you have an opinion, based—

Mr. Breen: Let us have the rest of it read.

By Mr. Eardley:

"Ormotabs are not sold as a cure-all for the troubles
of middle-aged people, nor are they sold as a youth
restorer. It is the purpose of Ormotabs"—

Mr. Breen: Read that over again. You left out two
words.

Mr. Eardley: I am sorry, I had the book here.

Mr. Breen: Read from the pamphlet.

By Mr. Eardley:

Q. I will start over again:

"Ormotabs are not sold as a cure-all for the troubles of middle-aged people, nor are they sold as a youth restorer. It is the purpose of Ormotabs to supply you with concentrated Chlorophyll, Sarsaparilla Extract, 579 Food iodine and other elements which are sometimes needed by many men and women past forty."

Doctor, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether or not such product might or could be effective as a nutritional adjunct to make one forget their troubles?

A. I do have.

Mr. Breen: I object. Nothing in that paragraph about forgetting troubles.

The Court: I haven't it before me.

Mr. Eardley: It is in the heading in bold print.

The Court: What page is that?

Mr. Eardley: At page 9, Judge, in the heavy bold print, "And forget your troubles!"

Mr. Breen: Yes, I will withdraw that. It is not in the paragraph down here.

The Court: "Past 40 and growing old too soon? Try Ormotabs, the nutritional adjunct for men and women past 40 and forget your troubles!"

The objection is overruled.

A. I do have.

By Mr. Eardley:

Q. What is your opinion?

A. Absolutely valueless.

580 Q. Why, Doctor?

A. It would be wonderful if one could forget their troubles by such a simple method as that. This has no nutritional value. There is no therapeutic value in chlorophyll; no nutritional value found in it. And sarsaparilla, the same thing may be said of sarsaparilla. Sarsaparilla has been studied exhaustively and we find no therapeutic action for it. Neither is there any nutrient value in sarsaparilla. Sarsaparilla could in no way be effective in making anyone forget their troubles. It has no value.

Q. What is the nutrient value of sassafras?

A. It has no nutrient value.

Q. What is the nutrient value of food iodine and sarsaparilla?

Mr. Breen: Sarsaparilla or sassafras?

Mr. Eardley: Sarsaparilla.

A. Sarsaparilla has no nutrient value, neither has sassafras so far as that is concerned.

Q. What is the nutrient value of papain, Doctor?

A. Papain has no nutrient value.

Q. Doctor, I will show you now Government's Exhibit 8A, Nutrition Guide which has already been admitted 581 in evidence.

Doctor, still keeping in mind the product Ormotabs with its constituents and its directions and labeling, I now refer you to Government's Exhibit No. 8A, page 13, paragraph 2, and referring now to the heading:

"Hormones. What you need to know about them."

Now, referring to paragraph 2:

"You don't get hormones in your food as you get vitamins or minerals; but if your glands fail to produce them in sufficient quantity or at the right time, you can probably aid your glands to a more normal production of hormones."

Now, Doctor, do you have an opinion based upon reasonable medical certainty and from your training, education and experience as to whether such a product so used might or could be effective in the condition just mentioned?

A. I do have.

Q. What is your opinion, Doctor?

A. It could not possibly aid the glands in the production of hormones.

582 Q. Why, Doctor?

A. We know of no single substance or substances that specifically aid the glands in the production of their specific hormones.

Q. Doctor, still keeping in mind that same product with the same ingredients we have just spoken about, and assuming further, Doctor, and now referring to page 14, the next to the last paragraph:

"Professor Russel E. Marker and Dr. Ewald Rohrman working at Penn State College reported that extract of sarsaparilla is used"—

Mr. Breen: Pardon me, you are not reading that correctly.

Mr. Eardley: "extract of sarsaparilla is useful in hormone-production."

Mr. Breen: Where are you reading from?

Mr. Eardley: The next to the last paragraph.

Mr. Breen: On page 14?

Mr. Eardley: That is right. And then it goes on:

"And chlorophyll is regarded by some as the hormone-like substance of green plants."

Mr. Breen: Where are you reading from? I can't find it. Here is the second paragraph. Read it.

Mr. Eardley: Here it is (indicating).

583 Mr. Breen: Start over again.

Mr. Eardley: "This may have profound influence on the human gland activities. Iodine is an essential component of the thyroid hormone."

Now, Doctor—

Mr. Breen: I object to the reading of that paragraph the way it is read. You are reading from the wrong book, I think.

Mr. Eardley: I beg your pardon, your Honor, I am reading from an old book here.

The Court: All right, you may withdraw the question.

Mr. Eardley: Yes.

The Court: You may restate it.

Mr. Eardley: Yes, I would like to, Judge.

Q. Now, Doctor, keeping in mind the product, and assuming further, assuming Ormotabs:

"Professor Russel E. Marker and Dr. Ewald Rohrman working at Penn State College reported that extract of sarsaparilla is useful in hormone-production. And chlorophyll is regarded by some as the hormone-like substance of green plants. Iodine is an essential component of the thyroid hormone."

584 Doctor, do you have an opinion, based upon reasonable medical certainty and from your experience, training and education, as to whether or not such a product so used could be effective in the conditions just mentioned?

Mr. Breen: I object to that.

The Court: Overruled.

A. I do have.

By Mr. Eardley:

Q. What is your opinion, Doctor?

A. It has never been convincingly shown that sarsaparilla has any pharmacological action. It definitely is not established that it in any way influences hormone production.

Chlorophyll is a substance useful only in plant economy. I have repeated again and repeat again, it has no place in human economy. It is a very valuable substance to plant life. It is that thing which together with the sunshine causes the leaves to become green in the plant. But we have no leaves that need to become green in the human physiology. We have no use for chlorophyll so far as is known. It is present abundantly in green vegetables which we eat but it does not metabolize in any significant manner either in nutrition or as a nutritional adjunct, by the 585 human body.

Q. Still keeping in mind the product Ormotabs, and now referring to the exhibit you hold, page 14, the last paragraph:

And assuming further, Doctor:

"For those men and women past 40 who are interested in experimenting with gland activation, Lelord Kordel has produced Ormotabs, a product containing concentrated sarsaparilla extract, chlorophyll, iodine and other ingredients. Try it for a period of three months as an experimental measure. It is available at most of the better health food stores."

Now, Doctor, do you have an opinion, based upon reasonable medical certainty and from your training, education and experience as to whether or not such a product so used could be effective in the condition mentioned here?

Mr. Breen: I object to that.

The Court: Overruled.

Mr. Breen: Speaking purely as an experiment, your Honor.

The Witness: I do have.

By Mr. Eardley:

486 Q. What is your opinion?

A. First of all, no ethical person experiments with human gland production.

Q. Why, Doctor?

A. It is a very dangerous thing to do. Experimenting

with the human glands would result in throwing off the balance of the endocrine production that would not be tolerated in medical practice or any other practice legally; because it would result in destroying the balance of the well being of the body. There is no such thing as experimenting ethically with the human glands.

Secondly, this substance in no way could increase gland production in any scientific known manner even in the lower forms of animal life, so far as has ever been demonstrated. The statement is false.

Q. I will now show you Defendants' Exhibit 16, Doctor, already in evidence.

Assuming a product called "Minerals. Chlorophyll and Vitamin D-Plus."

Assuming further, Doctor:

587 "Contains dicalcium phosphate, alfalfa, iron sulphate, irradiated yeast, potassium iodide, chlorophyll, sulphate of copper, cobalt, manganese, zinc, magnesium and nickel, magnesium trisilicate, lithium, lactate, chlorides of sodium, potassium and strontium, sodium borate, sulphur, bismuth subnitrate, excipients to prepare."

Assuming, further, Doctor:

"Six tablets daily furnish:

Calcium	750 milligrams
Phosphorous	580 milligrams
Iron	30 milligrams
Iodine	0.2 milligrams
Copper	150 micrograms
Vitamin D	600 U. S. P. Units
Chlorophyll	9 milligrams

"Plus 1 milligram of each of the following:

Manganese,
Cobalt,
Sodium,
Sulphur,
Potassium,

Chlorine—daily requirements for which have not been established. Plus: Magnesium, zinc, nickel, lithium, boron, strontium, silicon and bismuth—the exact need for which in human nutrition has not been established."

Assuming further, Doctor:

"Directions: Six tablets furnish the following percentages of the minimum daily adult requirements: Calcium, 100 per cent; phosphorus, 75 per cent; iron, 300 per cent; iodine, 200 per cent; Vitamin D, 150 per cent."

Now, Doctor, referring to Government's Exhibit 10, and assuming further, Doctor, page 10, the heading:

"The cells of your body may require these 19 important minerals."

Doctor, assuming further, and confining it to chlorine:

"Called the laundry man of the body; removes bodily poisons and helps in the distribution of hormones. Prevents excess weight. Keeps joints supple. Helps liver. Necessary for the formation of hydrochloric acid. 6 Minerals-Plus Tablets furnish 1 milligram of chlorine."

Now, Doctor, keeping all of these facts in mind, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether or not such a product so used might or could be effective in the condition mentioned above?

A. I do have.

Q. What is your opinion, Doctor?

A. That statement is too absurd to—

Q. Why, Doctor?

A. Chlorine is useful in the laundry; it bleaches dirty linen. It is very useful to the laundry man. Chlorine, as such, is dangerously toxic to the human being. We know, all of us here are old enough to know that chlorine gas was one of the deadliest enemies of World War I. Chlorine in the free state is very difficult to hold or maintain. Chlorine could not possibly reduce weight unless the individual became so toxic that he was losing weight because of toxemia. There is no such thing as chlorine-reducing the weight.

Increase in weight is due to an imbalance between food intake and energy expended. Chlorine is not one of the body substances.

The statement is false.

Q. Doctor, still keeping in mind the previous question and again referring to Exhibit No. 10, page 10, the heading:

"Potassium. Important in maintaining normal heart

590 beat. Necessary for glandular secretions. Prevents constipation. Useful for flushing kidneys of waste products. Helpful in all female disorders. Potassium is known as the healer, pain reliever. 6 Minerals-Plus Tablets furnish 1 milligram of potassium."

Doctor, keeping in mind the above facts, do you have an opinion, based upon a reasonable medical certainty and from your training, education and experience, as to whether such a product so used could or might be effective in the conditions mentioned above?

A. I do.

Q. "Necessary for glandular secretions"?

A. I do have.

Q. And as a healer and pain reliever?

A. I do have.

Q. What is your opinion?

A. It could not possibly cause increase of glandular secretions.

Q. Why?

A. It has never been known, it has never been shown scientifically to produce an increase of glandular secretions.

591 Q. Doctor, still keeping in mind the questions that have been asked you with regard to the label and contents;

And assuming further, Doctor;

Now, referring to Government's Exhibit 10, again, the sub head "Iodine."

And assuming further, Doctor:

"The controlling mineral! Prevents goitre due to iodine deficiency; nervous breakdown. A high iodine reserve gives mental energy, originality, pep and self-confidence. Helps check tonsilitis, overweight, weakness, etc. 6 Minerals-Plus Tablets furnish 0.2 milligrams of iodine."

Doctor, do you have an opinion, based upon a reasonable medical certainty and from your training, education and experience as to whether such a product so used might or could be effective in overweight conditions?

A. I do have.

Q. What is your opinion, Doctor?

A. It could not possibly be effective in the production

or alleviation, I should say, of overweight. Iodine in appreciable quantities reduces the activity of the thyroid gland which would have a tendency to increase the weight. No reduction in weight has ever been demonstrated due to iodine per se.

Q. Now, Doctor, still keeping the previous questions in mind, and again referring to Government's Exhibit No. 10, page 10, in the lower left-hand corner; and assuming further, Doctor:

"Zinc seems to be involved in processes responsible for normal growth, tissue respiration and hair growth. Indirectly involved in the body-use of carbohydrates."

Doctor, do you have an opinion, based upon reasonable medical certainty and from your training, education and experience as to whether such a product so used might or could be effective in the normal growth?

A. I do have.

Q. What is your opinion, Doctor?

A. It could not possibly be effective in that capacity. I discussed normal growth before. I said it was dependent on three factors; the proper secretions of the thyroid gland, the anterior pituitary and the well-balanced nutritional state.

Q. Now, Doctor, again keeping the product in mind with its labeling and its contents; and assuming further, Doctor, again referring to Government's Exhibit 10:

"Lelord Kordel's greatest contribution to nutrition: Minerals Plus.

"To meet the need for a balanced mineral supplement containing 19 minerals (plus Vitamin D and Chlorophyll), Lelord Kordel has perfected Minerals-Plus. This amazing new product supplies the full minimum daily requirement of calcium, iron and iodine, together with 75 per cent of the requirements for phosphorous. It also contains 15 other minerals (mentioned in this chart) the exact needs for which in human nutrition have not been established, but considered important by many authorities."

And assuming further, Doctor:

"To be on the safe side—to make sure you are getting needed minerals, Lelord Kordel suggests you take

from four to six Minerals-Plus tablets each and every day. A box of 100 tablets is only \$1.00.

"Ask your health food dealer for Minerals-Plus, the only mineral supplement giving you nineteen minerals. 594 Accept no other products. (Use order blank on back page)."

Now, Doctor, keeping all of those things in mind, do you have an opinion, based upon reasonable medical certainty and from your training, education and experience, as to whether there is a need in human nutrition for manganese, cobalt, sodium, sulphur, potassium, chlorine, magnesium, zinc, nickel, lithium, boron, strontium, silicon and bismuth?

A. I do have.

Q. What is your opinion, Doctor?

A. It is true that these elements are probably found in small quantities in all the body cells. No deficiency disease has ever been experimentally produced in lower animals by the withdrawal of any single one, or a combination of the minerals.

Q. Just, Doctor, is it needed in the diet of the human being?

A. Will you read the minerals again to which you referred?

Q. Yes. Manganese, cobalt, sodium, sulphur, potassium, chlorine, manganese, zinc, nickel, lithium, boron, strontium, silicon and bismuth.

A. These things are abundantly present in water, 595 vegetables and other food accessories. I must repeat that until such time that a reputable scientist, an accepted scientist, has established a deficiency disease in the lower form of animal life by withdrawing any of these substances, we cannot say that they are essentially necessary in a normal diet.

Mr. Breen: I object to the answer and move it be stricken.

The Court: Overruled.

By Mr. Eardley:

Q. I will show you Government's Exhibit No. 18, Doctor, which has been admitted in evidence.

Doctor, assuming a product called: "Kordel Tablets."

"Label: A non-specific food adjunct. Each tablet

contains sodium citrate, black cohosh root, poke root, natural oil of wintergreen together with excipients to prepare."

And assuming further, Doctor:

"Directions: For best nutritional results, take two Kordel Tablets before or after each meal."

And assuming further, Doctor:

596. "For children over four years, reduce intake to one-half or less."

Now, Doctor, keeping that in mind and now referring to Government's Exhibit No. 10, Page 28; and assume further:

"Stabbed in the back by arthritis?"

"Arthritis and rheumatism sufferers. Here is an easy food adjunct way to help palliate and relieve agonizing pain distress."

"Now is the time of year when arthritis is on the loose, stabbing victim after victim with its deadly dagger of pain. If you are one of these unfortunate people, here is important information for you to know. Many people suffering from nagging arthritis pains in back, knees, shoulders and hands never suspect that these pains may be caused, in some cases, by excessive acids within the body."

And assuming further, Doctor:

597. "As a dietary aid in the faster neutralization of these excessive acids which in turn may tend to bring speedier pain relief to this extent, Kordel tablets were designed by a well-known food nutritionist. They are not a magic-cure-all, but an effectively helpful combination of scientifically blended ingredients, each well-known to medical or herbal science."

Now, Doctor, do you have an opinion, based upon a reasonable medical certainty, and from your training, education and experience as to whether or not such a product so used might be or could be effective in relieving the suffering of nagging arthritis pains in the back, knees, shoulders and hands, and by relieving excessive acids within the body?

A. I do have.

Q. What is your opinion, Doctor?

A. The statement is false.

Q. Why, Doctor?

A. There is nothing in the ingredients which taken by

mouth could relieve stabbing pains. Secondly, the only thing that has any value in relieving acidity is sodium citrate and that is obtained presently in all citrus fruit. A teaspoonful of ordinary baking soda would have many times the neutralizing effect on acids than the daily dosage of these tablets would have. There is nothing here that could possibly substantiate the claims made in this paragraph, that is, if the body were suffering from excess-
 598 ive acids then definitely this would not be a beneficial adjunct. Neither would it in any known way relieve stabbing pain.

Q. Doctor, is this product containing these ingredients, which is here labelled Kordel Tablets, sodium citrate, black cohosh root, mineral oil of wintergreen, food adjuncts?

A. I have an opinion.

Q. Are they food adjuncts?

A. They are not food adjuncts.

Q. Will you explain?

A. Food adjuncts are substances which we consider as necessary to be taken because the daily diet does not contain that substance and because a deficiency of some kind in the way of a disease will be produced if the substance is not ingested.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. Doctor, do all medical men share your opinion that chlorophyll is not utilized by the body?

A. I cannot make a definite statement for the opinion of all professional people.

Q. Do you think they all agree with you?

599 A. I am sure that anyone with my training in science and medicine would agree with me.

Q. You don't know how many of them or what percentage have your training, do you?

A. We belong to the well-trained scientific group.

Q. Do you know anything about the work that has been done at Temple University with chlorophyll?

A. I have read this statement. I am not familiar with the original publication. I would not accept this statement as representing the original publication.

Q. Doctor, did I understand you to say there was no nutritional value in chlorophyll?

A. So far as is known, chlorophyll enters into no significant rôle in human metabolism.

Q. What do you base that statement on?

A. Pharmacology, experimental studies and statements in the U. S. Pharmacopeia regarding chlorophyll.

Q. How about chlorophyll contained in green vegetables?

A. You asked me regarding human nutrition. One's nutrition is the thing wanted in human nutrition, and plants need no red in the cells. We have no such analogy in human nutrition. Neither have we need in human nutrition, so far as is known, of chlorophyll; whereas in plants, the 600 plants need green coloring matter, have a real need of it. That does not apply to human nutrition.

Q. Have herbs any chlorophyll?

A. I beg your pardon?

Q. Have herbs any chlorophyll in them?

A. That is a broad statement. What is herbs?

Q. All living green plants?

A. That is what I said, green plants, the green coloring matter of plants is the chlorophyll.

Q. Then if a person eats plenty of green vegetables he gets some chlorophyll?

A. He gets many other things also in plant life.

Q. Is chlorophyll beneficial?

A. It does not enter into the human metabolic processes so far as has ever been scientifically demonstrated.

Q. Have you ever demonstrated that fact?

A. And no one else has.

Q. Have you tried to demonstrate it?

A. It has been shown, if that is the question that you mean, that it does not enter into the body economy. That has been demonstrated. Those statements can be found in any authentic textbook.

Q. What is papain used for?

A. Papain has no special use in medicine. It contains a digestive ferment in plant origin, which is not considered as being significant.

Q. Will papain aid digestion?

A. Papain contains a digestive ferment in plant origin. If our digestive process is functioning properly we need no digestive ferments taken by mouth in the form of papain. It might even do serious injury.

Q. But if it is not functioning properly, will it help?

A. It would depend entirely on the disfunction. No sweeping statement is possible to be made. It could be injurious.

Q. Could it be beneficial?

A. Not if the digestive ferments were properly in functional activity.

Q. Do physicians prescribe papain?

A. If the patient is ill, papain may be contained in some of the prescriptions. It would be a specific ingredient in the prescription due to a non-digestive disturbance.

Q. Did I understand you to say that sarsaparilla is valueless?

A. Modern medicine recognizes no important role in sarsaparilla.

602 It was used generations ago as sort of a spring tonic and cure-all but we have gotten away from that.

Q. What do you thing of botanic medicine recognizing sarsaparilla?

A. I am not a botanist and I cannot answer for any botanical medicine.

Q. Doctor, are you familiar with Potter's Encyclopedia of Botanical Drugs and Preparations?

A. No, I seem to have no special knowledge of it. I may have read it in days gone by. I do not recall right now of having any—

Q. Would you consider that encyclopedia an authority?

A. I would want to go into the—I would not want to answer that it is very highly authoritative source of information. I just stated that I would have to refresh my memory on just what Potter is.

Q. Did you ever read the discussion in that encyclopedia on sarsaparilla?

Mr. Eardley: I object.

A. I have not.

Mr. Eardley: The witness said she did not know anything about the book.

The Court: I did not hear you.

603 By Mr. Breen:

Q. As a medical doctor, would you be prejudiced against men who advise the use of herbs?

A. I would only be prejudiced to this degree, I would want to know what evidence this individual had, what

reason, what knowledge he had on this subject; how much he knew about the diseases which he professed that this herb would cure. In that I would really be prejudiced.

Q. Do you think that herbs are beneficial in any way?

A. When you say herbs, you are saying a lot. What herbs?

Q. Medicinal herbs?

A. Again, the term is too general. You would have to mention the specific herbs. Remember that we get many very good medicines from plants, if that is what you mean. If you mean the prescriptions usually compounded by the herb doctor that used to go around the country, I would say I am prejudiced.

Q. Do you know anything about the work done by Professor Marker and Dr. Rohman on sarsaparilla extract at the Penn State College?

A. I am not familiar with their specific publications. I know what that statement there indicates but I have not read their original article.

604 Q. Could Ormotabs do any harm, Doctor, to the human system?

A. Will you let me again see what the label says?

Q. I will, certainly.

A. There are six hundred U.S.P. units of Vitamin C.

Q. That Cetabs.

Mr. Eardley: No.

The Witness: Oh, excuse me. Could they do any harm? I know of no specific harm that they could do except, perhaps, kelp contains iodine and it might be that an indiscreet use of iodine could be injurious. There is that possibility.

By Mr. Breen:

Q. Is there very much iodine in that product?

A. I do not recall right now what the assay is.

Q. It is stated clearly on the label, I believe.

A. On the label, let's see. The directions here do not say that they would be harmful, they say that as a dietary supplement for experiment, 2 tablets provide 200 times.

Q. That is two micrograms, I believe, is what it says, there is that amount of iodine in the product.

A. 200 per cent. That is twice as much iodine as the adult requires. If an individual were taking several

605 things containing, each of them, that much iodine in excess over what is found in the normal average diet, there is a possibility of getting too much iodine, and iodine is something that we should use with discretion.

Q. If they were not taking other things containing—

A. Well, that is highly problematical; I do not know how I could answer a specific question that would be that problematical.

Q. In itself the product is harmless, isn't it?

A. I would not wish to go on record as making that sweeping statement because people react very differently to the same amount of iodine. There is such a thing as iodine rash and dermatitis with the use of very small amounts of iodine. There is a sensitiveness to some of these things in a great number of individuals and to that degree, to that group it would be extremely dangerous.

Q. How many so-called trace minerals are needed by the body of a person, in a human body?

A. How many of the so-called what?

Q. Trace minerals?

A. Trace?

Mr. Eardley: I object, immaterial.

The Court: She may answer.

606 A. Trace minerals? T-r-a-c-e?

By Mr. Breen:

Q. Yes.

A. I am not familiar with the general term in connection with the minerals needed by the body. Just what do you mean by trace minerals? It does not seem to fit in with my knowledge of minerals referred to as trace minerals.

Q. Calcium, phosphate, iron—

Mr. Eardley: I am going to object to the question. I do not believe the question is clear to the witness.

The Witness: I never heard of the term "trace minerals."

By Mr. Breen:

Q. You haven't heard of trace minerals?

The Court: The witness has answered.

By Mr. Breen:

Q. Are you a nutritionist?

A. I am. What do you mean? Will you again state

what you mean by trace minerals? I take it he is a nutritionist and you are going to tell me something, I know.

Q. Do you read the Journal of the American Medical Association?

A. I am a Fellow of the A.M.A. and receive the
607 periodical weekly and read it.

Q. Did you read the issue of December 11, 1943?

A. I probably did read part of it, at least, I am not sure.

Q. Did you read the article headed, "Importance of trace elements of biologic activity"?

A. Traces of elements, I presume is what it really means. Yes, that is what I said.

Q. Is it the "Importance of trace elements in biological activities"?

A. What is the conclusion? I don't get much out of your analysis there. What was the significance of it?

Q. That article discusses trace minerals very extensively. I am asking you if you read that article.

Mr. Eardley: I am going to object to counsel stating what the article discusses.

Mr. Breen: She asked for it.

The Court: She may answer. Have you read the article?

The Witness: No.

Mr. Breen: I think that is all, Doctor.

Mr. Eardley: I have no further questions.

(Witness excused.)

The Court: How much more time will the government take in this case?

Mr. Eardley: We feel we will surely go on all day tomorrow.

The Court: On the government's side?

Mr. Eardley: Yes.

The Court: All right.

(And thereupon, the further proceedings in this cause were continued to reconvene on Thursday, March 21, 1946, at 10 o'clock a. m.)

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Before Judge Walter J. LaBuy.

Thursday, March 21, 1946, 10 o'clock a. m.

Court convened pursuant to adjournment.

Present:

Mr. Robert C. Eardley,
appeared for the Government;
Mr. James W. Breen,
appeared for the Defendants.

* * (Consolidated Causes 45 CR 490) * *

The Court: Proceed, please.

DR. ANDREW CONWAY IVY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name, please?

A. Andrew Conway Ivy.

610 Q. Where do you live, Dr. Ivy?

A. I live at 8158 Merrill Avenue, Chicago; my office is at 303 East Chicago Avenue.

Q. You are a licensed physician, licensed to practice medicine and surgery in the State of Illinois?

A. I am, yes.

Q. Doctor, what if any education did you have to prepare yourself for your profession?

A. I received some of my college education at the State Teachers College, Cape Girardeau, Missouri. I received my B. S. Degree from the University of Chicago in 1916; Master of Science Degree in the same institution, 1918; and Doctor of Philosophy Degree in 1919; M. D. Degree from Rush Medical College in 1922.

Q. After you graduated from medical school, did you serve an internship?

A. Yes, I served an internship at Mercy Hospital, Chicago and Augustana Hospital, Chicago.

Q. How long did you serve the internship?

A. One year.

Q. What did you do after you completed your internship?

A. I was a teacher of physiology and pharmacology at the Loyola University School of Medicine. Then, at the University of Chicago in 1925, I became a Nathan Smith Davis professor of physiology, pharmacology, toxicology, and therapeutics at the Northwestern University Medical School.

Q. Are you at the Northwestern University Medical School at this particular time?

A. Yes, sir, that is the position I now hold.

Q. Do you instruct students, medical students, at that university?

A. Yes.

Q. Do you instruct any postgraduate students?

A. Yes. I have a number, generally averaging around twenty per year. At the present time I am instructing twelve doctors who have returned from the armed services in various specialties in the field of medicine and surgery.

Q. What are those specialties you give instructions in, Doctor?

A. In orthopedic surgery, obstetrics, gynecology, alimentary tract, cardiovascular system, and the nervous system and nutrition.

Q. What if any societies or associations are you a member of, Doctor?

A. I am a member of the American Medical Association and Past Chairman of the Section on Physiology and Pathology; a member of the Illinois and Chicago Medical societies. A member of the Chicago Institute of Medicine; a Past President of that organization. A member of the Chicago Society of Internal Medicine, and Past President of that Association. I am a member of American Physiological Society and Past President of that organization. I am a member of the American Gastroenterological Association and Past President of that Association; a member of the Association for the Study of

the Glands of Internal Secretion; the American Institute of Nutrition; American Association for the Advancement of Science. I am a member of the American College of Physicians, and numerous other societies, special scientific societies.

Q. In these societies that you mentioned, Doctor, are there certain requirements necessary in order to become a member?

A. Yes.

Q. What are those requirements and what are those societies, Doctor?

A. Well, it is necessary to be a scientist of high standing or a doctor in high standing, with publications and contributions to the advance of medical science.

Q. Do you hold any honorary memberships in any societies, Doctor?

A. I am an honorary member of the Harvey Society of New York Academy of Medicine; honorary member of the Des Moines Academy of Medicine; honorary member of the Gorgas Institute; General Gorgas was the man who rendered it possible to open the Panama Canal.

Q. Have you published any papers, Doctor?

A. I have published or contributed more than seven hundred scientific articles in the fields of Physiology, Nutrition, Endocrinology, Alimentary Tract, Liver and Gall Bladder, Uterus, Male and Female Congenital Tract, Central Nervous System, Toxicology, Pharmacology, Therapeutics and Clinical Investigation.

I have done a monograph on the physiology of the gall bladder.

I have in preparation a book on the peptic ulcer problem; on the physical anatomy of the uterus in labor; and another on the production and treatment of inter-sexual disturbances which is due to the disturbance of the endocrine glands.

Have you published any textbooks, Doctor, or assisted in the writing of any chapters in textbooks?

A. I have contributed to a number of textbooks and system of medicine. For example, I contributed a chapter to Hausman's book on the diseases of the alimentary tract; contributed to Brennamann's System of Pediatrics.

Q. Are you a consultant, Doctor, for the United States Navy?

A. Yes. I am consultant to the Office of Surgeon General of the United States Navy. I organized early in the war the staff and started the practice of the Naval Medical Research Institute. Consultant to Surgeon General Parman. Consultant to the National Advisory Board organizer. Consultant to the Planning Division in the Field of Nutrition of the Quartermaster General of the Army. Consultant to the Surgeon General of the Army in the capacity of Consultant to the Nutrition Laboratory of the Surgeon General's Office.

Q. Are you still doing work for the Army and Navy as consultant at this time, Doctor?

A. That is correct, in these various consultant capacities which I have referred to.

Q. What if any hospital are you associated with, Doctor?

A. I practice only as a consultant, and am a member of the staff of Wesley Memorial and Passavant Memorial hospitals in Chicago.

Q. Doctor, I will now show you Government's Exhibit No. 19, No. 10 and No. 8A, which have all been admitted in evidence.

Doctor, assuming a product called "Everm Capsules for dietary use. Standards and need for Vitamin E in human nutrition have not been definitely established."

Assuming further:

"Average doses: 2 or 3 capsules daily. In cases of pronounced Vitamin E deficiency."

Doctor, referring to Government's Exhibit 10, which is "Health Today, Spring 1945," and referring to Page 20, top of page:

"Vitamin E revealed as a life process key."

And then paragraph 2, Doctor, assuming further: "Vitamin E"

Mr. Breen: I object and I suggest, your Honor, that he commence at the beginning. It is very short. And read everything after "revealed as a life process key."

By Mr. Eardley:

Q. Assuming further, Doctor:

"Doctor K. C. D. Hickman studies Vitamin E, shows

it protects and extends action of other vitamins in chief organs of body.

- 616 "The chemical architecture of life, the great mystery which scientists in many fields are trying to solve, may be illuminated as a result of investigations into the fertility vitamins by biochemists. The whole vitamin situation may be modified by the discovery that fertility vitamins have important functions other than fertility. These scientific advances were concentrated in a survey of the properties of vitamin E by Dr. K. C. D. Hickman of Rochester, in which he summarized the work of many scientists in a half a dozen institutions and which he presented as a host of revelations, challenges and unsolved problems at the recent Annual Convention of the American Chemical Society in New York."

Assuming further, Doctor:

- "Vitamin E is commonly identified as the fertility vitamin, a potent chemical substance which by its abundance or deficiency determines whether a living organism will be able to reproduce. Dr. Hickman made it very evident that the situation is not nearly so simple, and the three kinds of vitamin E extend their beneficial influence into many other fields than the reproductive process. Chief among the other
617 activities is the ability to protect and extend the action of other vitamins in the intestinal tract and in the organs of the body. In the presence of vitamin E, vitamin A for instance, is much more beneficial."

Now, Doctor, keeping the product in mind and the facts just read to you, and the directions for use, do you have an opinion, based upon reasonable medical certainty and from your training, education and experience as to whether or not such a product so used might or could be effective in the conditions mentioned above?

Mr. Breen: I object to that.

The Court: Overruled.

A. They could not be because it has not been demonstrated that vitamin E is of benefit to any other form than the rat. In rat deficiencies vitamin E in the female will cause abortions, and in the male they will cause degeneration of the spermatogenic in the testicles. It has not been demonstrated to be of any value whatsoever in man.

By Mr. Eardley:

Q. Doctor, still keeping this product in mind, with its directions and contents; and assuming further, and 618 now referring to Government's Exhibit 10, the middle of the page at the bottom:

"Vitamin E and heart failure.

"During deficiency experimentation"—

The Witness: Will you please locate that for me?

Mr. Eardley: Right in the center of the page.

The Witness: Page 20?

Mr. Eardley: Page 20 in the text.

The Witness: I understand.

By Mr. Eardley:

Q. "During deficiency experimentation with animals it is not uncommon for an animal to die unexpectedly from heart failure. Various explanations may be given, but it is believed that a lack of Vitamin E is generally responsible. This lack may have a bearing on some cases of human heart degeneracy."

Doctor, keeping the product and directions and contents in mind, and what was just read to you, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the condition just read? Q

Mr. Breen: I object to that.

The Court: What is the ground of the objection?

619 Mr. Breen: There is no connection in this article with anything the defendant said. It is a quotation from another physician, the whole page.

The Court: Overruled.

The Witness: No.

By Mr. Eardley:

Q. Why, Doctor? What is your opinion?

A. Vitamin E has never been shown to have any effect in so far as the function of the heart is concerned.

Q. Doctor, still keeping in mind this product, and assuming further:

"Vitamin E and paralysis."

And referring now to the top of the page, Page 20:

"A sensational use for vitamin E has recently been found by Dr. Herbert Evans at the University of Cal-

ifornia. He experimented by giving animal mothers just enough of the vitamin to allow them to produce a living litter. He then deprived the mothers of 'E' entirely so that the animals got none in the milk and then he took it away from their diet. He thought that this might have some effect upon reproduction
620 but to his amazement what actually happened was that the animals became paralyzed. When vitamin E is restored to the diet, the paralysis disappears. It has, therefore, been used in human medicine, given to people with various forms of paralysis. In one form at least it has proved of spectacular benefit, the cases being completely restored to health."

Now, keeping all these facts in mind, do you have an opinion, based on reasonable medical certainty, and from your training, education and experience, as to whether or not such a product so used might or could be effective in the cure, mitigation or treatment of the condition of paralysis?

Mr. Breen: I object.

The Court: State your objection.

Mr. Breen: This thesis discusses what some other doctor has reported, and that is all. This defendant makes no claim in this article.

The Court: I haven't read it. What page and what paragraph?

Mr. Eardley: At page 20, Judge.

Mr. Breen: Page 20, top of the page, second paragraph, second half of the page.

The Court: The article does not limit it to Dr.
621 Hickman?

Mr. Breen: No.

The Court: The article does not—

Mr. Breen: The first column did not discuss Hickman. The whole article discusses it. The whole article is just a quotation of the results of his investigation.

The Court: Well, he refers to Mr. Hickman's findings or opinions but there are portions that he wrote.

For instance, beginning with the second paragraph under that heading, it reads:

"Vitamin E is commonly identified as the fertility vitamin, a potent chemical substance which"—

Mr. Breen: The paragraph under discussion, your Honor, is the first paragraph of the second column.

The Court: Oh.

Mr. Breen: That is the one that is under discussion.

The Court: Oh, that is Evans instead of Hickman.

Mr. Breen: Yes.

The Court: Well, now, the last two sentences do not seem to refer to Dr. Evans or discuss his findings. It reads:

"It has, therefore, been used in human medicine, 622 given to people with various forms of paralysis. In one form at least it has proved of spectacular benefit, the cases being completely restored to health."

Mr. Breen: That, your Honor, must be construed as the result of Dr. Evan's experiments that they are discussing.

The Court: It is the writer stating his own opinion. Objection overruled.

By Mr. Eardley:

Q. Doctor, do you have an opinion?

A. I have an opinion.

Q. What is your opinion?

A. The work with vitamin E on the rat and the rabbit indicated it might be of some value in treating certain types of muscular diseases; and whenever something of that sort is discovered in experimentation with lower animals it is tried in various diseases which appear in the human body.

Vitamin E has been tried in the treatment of various sorts of processes of muscular degenerations, and it has been found to be of no benefit and that is recognized as such by the profession and is not accepted by any of the leading groups, any of the leading groups in the field 623 of medicine in this country or any other country.

Q. Doctor, would your answer be the same if this question was given to you:

"Vitamin E was found helpful in the treatment of some diseases of the muscles"?

A. The answer is the same.

Mr. Breen: Read the whole paragraph. It is only two lines.

By Mr. Eardley:

Q. "It was reported recently before the closing sessions—"

Mr. Breen: No, start reading it, why don't you read the whole paragraph?

Mr. Eardley: All right.

Q. "Vitamin E and Muscles.

"Vitamin E was found helpful in the treatment of some diseases of the muscles, it was reported recently before the closing sessions of the National Academy of Sciences meeting."

Would your answer be the same?

Mr. Breen: I object.

The Court: Overruled.

Mr. Breen: Certainly no language by the defendant in that quotation.

624 The Court: He may answer.

The Witness: The answer is the same.

By Mr. Eardley:

Q. Doctor, still keeping in mind the same product with its labeling and contents; and assuming further, Doctor, now referring to page 20 again in the following paragraph:

"Other functions of vitamin E. There are studies, preliminary in a way, which prove that vitamin E profoundly affects the keenness of the mind and intellect. A vitamin E-starved child is a dullard. A vitamin E-surfeited child is bright, alert, vigorous and mentally responsive. Everyone knows that fullness of normal reproductive physiology and long life and mental vigor are eternal companions. Not that sex lust is a mark of normal living; but full physiologic vigor in matters having to do with reproduction can only be possible when the body is at the very pink of superlative condition. Vitamin E certainly has to do with that."

Doctor, keeping in mind the facts that have just been given you, do you have an opinion, based on reasonable medical certainty, and from your training, education
625 and experience as to whether such a product so used might or could be effective in the condition just read to you?

A. It is not true that a vitamin E-starved child is a dullard. There is no evidence vitamin E deficiency in the

human being has any deleterious effect whatsoever. And in reference to its relation to long life and mental vigor and eternal companions, that to me is ridiculous nonsense because it is impossible for any substance to give us immortality. It has not been shown that vitamin E has anything to do with the sex function in the human being.

Q. Still keeping in mind the product and its label and contents, and assuming further, Doctor,—now, we will refer to the next paragraph following the one that was just read:

“The mistake is in the belief that because the race is reasonably fertile, it need not concern itself with vitamin E. The race is fertile enough, in numbers, yes, but not in the quality of its offspring. There should be no limit to the effort to insure finer and better children. Every attempt should be made to eradicate dull minds, asylum parasites, mental and 626 bodily weaklings, timorous and sexual freaks.”

Doctor, having the product in mind and the statement just read, do you have an opinion, based upon reasonable medical certainty, and from your training, experience and education—

A. Yes.

Q. —as to whether such a product so used could be helpful in the condition just mentioned?

Mr. Breen: I object.

The Court: Overruled.

Mr. Breen: Nowhere in that paragraph does it refer to the product at all.

The Witness: I think the product vitamin E could have no effect in accomplishing the ends mentioned in that paragraph.

By Mr. Eardley:

Q. Why, Doctor?

A. Because it has not been shown that vitamin E has any effect on any of the functions of the human body.

Q. Doctor, still having in mind the product with this labeling and contents, and assuming further, Doctor, now referring to the following paragraph in the same column:

“Although the application of these findings to human 627 beings is still not completely settled, many authorities believe that in certain cases of human sterility the deficiency of Vitamin E plays an important role. It

has been reported that when this vitamin is given in concentrated form it has been highly successful in the treatment and prevention of repeated abortions and miscarriages."

Keeping those facts in mind, do you have an opinion, based upon reasonable medical certainty, from your training, education and experience, as to whether such a product so used might be or could be effective in the condition just mentioned above?

A. It could not be effective in that condition.

Q. Why, Doctor?

A. Because it has not been shown that vitamin E has any effect on any of the functions in the human body.

Q. Doctor, is there any disease of man that is due to vitamin E deficiency?

A. No.

Q. Now, Doctor, I will ask you to refer to Government's Exhibit No. 8A, "Lelord Kordel's Nutrition Guide," and refer to page No. 11, Doctor.

Now, keeping the product in mind with its labeling 628 and contents, and assuming further, Doctor:

"Vitamin E: Vitamin E is one of the newer vitamins and has proved of very considerable interest. It is fat soluble and is found mostly in fatty parts of vegetables. It is a necessary factor in growth after sexual maturity. Essential to normal reproduction: necessary to the germinal epithelial structure in the male and in the placental function in the female. Vital to normal muscle structure. Has been used successfully in treating certain types of sterility. Impaired mentality is often due to vitamin E deficiency. Essential for normal functioning of pituitary and thyroid glands."

Now, Doctor, keeping all these facts in mind, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience as to whether such a product so used might be or could be effective in the conditions mentioned above?

A. Not in the human being.

Q. Why, Doctor?

A. Those statements apply only to the rat.

Q. I will now show you Government's Exhibit No. 21A.

Doctor. Assume a product called Lelord Kordel's Fenugreek Tea.

"Label: Consists of Fenugreek seeds."

And assuming further:

"Directions for preparing: Use two teaspoonfuls for each cup of rapidly boiling water. Steep about five minutes."

Now, Doctor, referring to Government's Exhibit 10, "Health Today, Spring, 1945," page 4:

"Stomach agony? Upset stomach? Sour taste in mouth, Gas pains? Heartburn? Acid-indigestion? Belching? Bloating?"

I will show you Government's Exhibit 11, Doctor, and as this question is being read I would like you to refer to Government's Exhibit 11 at the same time, and the same reference that appears on the top of Government Exhibit 11.

Assuming further, Doctor—

Mr. Breen: What is Government's Exhibit 11?

Mr. Eardley: It is the contents of this picture here.

Mr. Breen: Oh.

By Mr. Eardley:

Q. Assuming further:

"Try for amazing relief with Fenugreek Tea."

Now, Doctor, with those facts in mind, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective in the conditions mentioned above?

A. Well, it could not.

Q. Why, Doctor?

A. In my opinion, to the people and patients, the stomach refers to the abdomen, and agony means pain, colic and distress. There are many diseases which can give stomach agony from the lay sense expression. One is pyrosis; cancer of the esophagus; ulcer of the esophagus; gastritis; gastric ulcer; gastric cancer; spasm of the pylorus; duodenal ulcer; duodenal tumors; pancreatitis; cancer of the pancreas; cancer of the gall bladder; gall stones; appendicitis; ulcerative colitis; spasm of the colon; and cancer of the colon. Obviously, this tea will be of no benefit whatsoever in treating stomach agony due to those causes or

caused by any other disease of the alimentary tract or of the liver and gall bladder. As a matter of fact, it is contrary to the good principles of public health to state that this should be taken for these diseases because a patient who has cancer of the esophagus, ulcer of the esophagus, cancer of the stomach, ulcer of the stomach, cancer 631 of the pancreas, a gall stone, or cancer of the gall bladder and bile tract or appendicitis, or ulcer or cancer of the colon, where this will be of no value whatsoever, that they will prolong the proper treatment, diagnosis and treatment of the disease and in that way are placing in hazard their own lives and the capacity and ability of a physician to treat and correct these diseases when the patient finally does come to him.

Q. All right, Doctor, keeping in mind the product with its labeling and contents, and also the exhibit showing the writing on the placard; and assuming further, Doctor, referring still to Government's Exhibit 10, second paragraph, the first paragraph in the second column:

"Being a liquid mucus-solvent, Fenugreek Tea naturally tends to flush out thick stagnant bile and also to assist flushing of kidneys."

Doctor, keeping all these facts in mind, do you have an opinion, based upon reasonable medical certainty and from your training, education and experience as to whether such a product so used might or could be effective in the conditions just mentioned above?

632 A. That is scientifically ridiculous.

Q. Why, Doctor?

A. It is impossible for a tea of this sort, or anything else containing bile salts, and a high protein diet, to increase the flow of bile and to flush out the bile ducts.

Then, in addition, of course, in regard to the kidneys, it is nonsense to say that substances accumulating in the tubules of the kidney must be flushed out.

Q. Doctor, still keeping in mind the same product, Fenugreek tea, with its labeling and contents and the writing on the placard; and assuming further, Doctor, referring to the third paragraph in Column 2 of the same page:

"Fenugreek Tea helps flush out impurities which may have been inside you a long time. By helping to dissolve excess mucus it can make your digestive organs feel sweet and clean. Try it today! (Lelord

'Kordel's Fenugreek Tea is never sold in bulk!')

Doctor, keeping all these facts in mind, do you have an opinion, based upon a reasonable medical certainty and from your training, education and experience as to whether such a product so used might or could be effective 633 in the conditions just referred to?

A. I have an opinion.

Q. What is your opinion, Doctor?

A. Those statements again are scientifically and medically ridiculous.

Q. Why, Doctor?

A. Because impurities for a long period of time do not accumulate in the body. As to the mucus, it is not a good idea to absorb the mucus because mucus is a protective substance and the thicker it is the more protective it is from injury. And hence there should be no attempt to dissolve mucous.

And in the second place, there is no principal in this tea which will dissolve mucous. As a matter of fact, it is mucoulaginous; it makes a mucoulaginous type of tea.

I cannot understand how anyone can feel that their digestive organs are sweet. How can they state their digestive organs? How can they feel that their digestive organs are clean?

Q. Doctor, still keeping in mind this product, Fenugreek Tea; with its contents and labeling, and the labeling on the placard; and assuming further, Doctor, now referring to page 4 again, the small type in the center:

643 "1. Headaches, backaches, and that tired-out feeling are often caused by toxic poisons that may enter the blood stream because of pockets of impurities in the intestinal tract.

"2. The liver, when sluggish and inactive, slows down the 'bile flow' causing headaches and lack of energy. Instead of using often harmful 'liver pills' try Fenugreek Tea—it's a natural herb.

"3. Impurities (acid and slime deposits) in kidneys are common causes of so-called rheumatic and neuritis pains and general physical debility. The kidneys are composed of 15 miles of delicate tubing. Try cleansing the kidneys with Fenugreek."

Now, Doctor, keeping all of those things in mind, do

you have an opinion based upon reasonable medical certainty and from your training, education and experience as to whether or not such a product so used might or could be effective in the conditions just read to you?

A. I have.

Q. What is your opinion, Doctor?

A. That could not be true. In the first place, the 635 statements are false, and if they were true that tea would be of no benefit for such conditions.

Now, impurities and toxic materials in the alimentary tract do not cause backache, and headache, by toxin substances being absorbed in the bloodstream. And, furthermore, they cannot collect in the crypts because the crypts in the stomach, intestines and colon are there and have the function of serving as tubules and lead off the secretions from the cells in the lining of the bowel or alimentary tract. It is impossible to get any foreign material down into those ducts. Those ducts are too small. We have tried it many times and have met with failure because the natural flow of the digestive fluids, of course, is out of these crypts to the outside which tends to prevent and does prevent that material from accumulating in these glandular ducts and recesses.

I may say again, in so far as an opinion is concerned, slime and material, toxic material, does not accumulate in the kidney tubules which is referred to in this script.

The Court: The Court will recess for fifteen minutes.
(Recess.)

By Mr. Eardley:

636 Q. Doctor, I will show you Government's Exhibit 8C, which is the book entitled "Twenty Short Lessons in the Art of Relaxation."

Doctor, still keeping in mind the product Fenugreek Tea with its labeling and contents and the placard there; and assuming further, Doctor, now referring to the third paragraph on page 30:

"If you are troubled with an excess mucous condition—if you cough-up an embarrassing amount of catarrhal phlegm—if your stomach is upset as a result of too much mucous, you will certainly be interested in experimenting with Fenugreek Tea to see if you can eliminate this condition."

Now, Doctor, keeping in mind the product and directions for use, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether or not such a product so used might or could be effective in counteracting those conditions mentioned?

Mr. Breen: I object to that.

The Court: Overruled.

The Witness: Yes.

By Mr. Eardley:

637 Q. What is your opinion, Doctor?

A. It would have no effect in those conditions.

Q. Why, Doctor?

A. Also, as implied, anyone who would be taking it for such reasons would be doing it experimentally, and in experimenting they would be gambling their health and their life on the basis of such misleading claims.

Q. What is the cause of catarrhal phlegm, Doctor?

A. Well, catarrhal, catarrhal generally refers to inflammation of the mucous membranes, and in this case it may be presumed that refers to the inflammation of the lining of the stomach or gastritis. Fenugreek Tea contains no ingredient which would be of any benefit whatsoever in the treatment of gastritis.

Q. Doctor, what is the significance of coughing up catarrhal phlegm?

A. Well, when phlegm is coughed up, it does not come from the stomach and it comes from the lungs and the constituents of Fenugreek Tea would be absolutely of no value for the treatment of bronchitis, or of any other pulmonary condition, and coughing is one of the first signs of cancer of the lungs. And when one is coughing up mucous, because they cough up phlegm they should be subjected to an X-ray of the chest. They may have tuber-
637 culosis. And in tests of that sort, if one experiments with themselves, that means to encourage one to experiment and that means that they are gambling with their health and their life.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. Doctor, isn't it true that sometimes there is a considerable gathering of phlegm in the throat?

A. When there is an inflammation of the sinus, when there is inflammation of the larynx and when there is inflammation of the mucous membrane of the respiratory tract, as is the case, in bronchitis, pneumonia, cancer of the lungs or even cancer of the esophagus, phlegm may come up in the throat. Fenugreek Tea would have absolutely no benefit upon those conditions and would delay the time that such a patient should receive good therapy.

Q. Would the taking of it relieve any of the phlegm in the throat at all?

A. No, it would not get at the cause of the disease whatsoever.

Q. I did not ask you that. It could not cure cancer, 639 we admit, but could it assist in removing any of the phlegm that gathers in the throat?

A. No more than a drink of water.

Q. Would a drink of water do it?

A. It would temporarily remove the phlegm from the pharynx.

Q. And Fenugreek Tea would do that same thing, would it?

A. Just like a drink of water.

Q. Are you familiar with the herb Fenugreek, Doctor?

A. Yes.

Q. Have you made a study of it?

A. I have not made a study of it but I am familiar with its sources.

Q. Have you made any tests of any kind?

A. I have made no tests of that compound. It has been tried out many times in the past with negative results.

Q. You, yourself, haven't made any tests?

A. I have not made any tests, myself. It has a maple-like flavor and a little vegetable mucilage type.

Q. Will you please refer to page 4 of Exhibit 10, being Health Today, and read the quotations appearing at the left-hand bottom of the page?

A. (Witness refers to said document.)

640 Q. Have you read them, Doctor?

A. All right, sir.

Q. What do you think of those statements made by those various people?

A. In the first place, the people referred to are not authorities; in the second place, they use language which

was used fifty to one hundred years ago. For example, the expression "imposthumes," which is never used today, refers to abscesses.

And, for example, the expression "matrix," it speaks of "in the matrix"; that is an expression that is not used today at all. It refers to the womb and uterus.

And the language there, and also the claims that are implied, are simply nonsensical today.

Q. Have you read what Dr. Otto Mausert said about Fenugreek Tea? That is the fourth paragraph.

A. Yes.

Q. What do you think about that?

A. He says it is a healthful, soothing and healthful beverage for ulcers, colitis and other internal inflammations. I think that is a very inaccurate and serious claim to make because it would have absolutely no value in the treatment of ulcers. It would predispose a person 641 to having a fatal hemorrhage or perforation. The same thing is true of colitis, and if they took it for appendicitis they would be inviting almost a sure death.

Q. He doesn't tell them to do that, does he?

A. Yes, he says that it is a soothing and healthful beverage for other internal inflammations, and appendicitis is an inflammation of the appendix.

Q. Does he mention appendicitis?

A. No, but appendicitis is an inflammation, an internal inflammation.

Q. What other inflammations are there besides appendicitis?

A. Another is pancreatitis, where a patient would still be inviting death if he took it. And colon acids is another, and gastritis is another example.

Q. Doctor, do you know Dr. Mausert?

A. No, I do not know him.

Q. Have you ever heard of him?

A. This is the first time I ever heard of him, and that is why I say that these quotations are not from men of authority in medicine because if they were I would know those names and be familiar with their writings.

Q. Do you know all the authorities on medicine?

642 A. Yes, sir.

Q. Every single one?

A. Yes, sir. I have been in this business for twenty-

five years and I have worked at it, and I know the authorities in medicine throughout the world.

Q. Have you read every medical textbook that has been published?

A. I have not.

Q. In the last twenty-five years?

A. I have not read every medical textbook that has been published, but I am acquainted with the authors of every useful textbook in medicine, authoritative textbooks in medicine that are published.

Q. What do you call a useful textbook?

A. Those textbooks which are recognized as being authoritative. There are textbooks in medicine, such as are quoted here in this last proposition, which are not recognized as authoritative and hence are not generally used.

Q. They are not recognized by the medical fraternity, is that what you mean?

A. I object to the implication, fraternity. They are not recognized by medical scientists and the medical profession, people who are teaching medical sciences and 643 medical practice to the young men of our country; and to the doctors who took care of our soldiers during the war.

Q. Doctor, from your experience, your great experience, would you say that medicine is an exact science?

A. That which has been established as being true in medicine is an exact science. It must be applied like any other science with art and skill.

Q. But is it exact, Doctor?

A. That which is true and scientific is exact.

Q. How much is true and scientific and how much is not true?

A. Well, if you would like for me to make an estimate, I would say that those things which are established and recognized as facts are one hundred per cent true.

Q. What are they?

A. For example, we know that penicillin may act to destroy or prevent the growth of certain specific organisms. We know that streptomycin—

Q. Is there any controversy about penicillin?

A. What?

Q. Is there any controversy about penicillin affecting results?

A. There is no controversy because we know the 644 bacteria from which we get it. The same thing with streptomycin; and the same with other various sulfa-drugs. We know that any laxative or vegetable mucilage is dangerous to take when there is inflammation of the appendix. That is a scientific fact. It should not be taken as a palliative when there is cancer of the stomach, esophagus, gall bladder, pancreas or colon.

Q. Doctor, do you know whether or not some people get results long after doctors have given them up and pronounced them incurable?

A. No, I do not know that to be true. As a matter of fact, I question the accuracy of that statement.

Q. Are you somewhat prejudiced in favor of medical men and have a desire to discredit any who are not?

A. I am prejudiced only in so far as the truth is concerned. I am always prejudiced in favor of the truth.

Q. Now, speaking of the truth, Doctor, what would you say about letters from people who enjoy relief from the use of Fenugreek and feel they were cured by it or helped, rather, I beg your pardon?

Mr. Eardley: I object to that, immaterial.

Mr. Breen: It is cross examination, your Honor.

The Court: He may answer.

645 A. I do not consider that as evidence of the truth because sometimes in mild conditions people get well even though they take nothing and testimonials from them do not mean anything.

Q. What things—

Mr. Eardley: I object to counsel interrupting the witness.

The Court: Have you finished your answer?

Mr. Breen: Go ahead, I beg your pardon, I thought you had finished.

A. Proof of that, Sir, does not constitute scientific evidence because it is not controlled.

By Mr. Breen:

Q. Will you repeat your answer and keep your voice up, Doctor? I cannot hear you.

A. I said no testimonial evidence of that sort was any

evidence because it is not controlled, because an individual has a complaint and they take something and they get better, that does not constitute evidence that what they took was responsible for the relief of their complaints. It is the same error of logic which is well known as post hoc propter hoc. It means after this because of that. It is an error many people make in logic and reasoning.

646 Q. Doctor, is it not possible that some physicians might differ with some of the views that you have expressed here?

A. I don't believe so.

Q. Have you made any examination of the Lelord Kordel products?

A. I have not.

Q. Are you in sympathy with the use of herbs?

A. Why, we have many herbs and extracts in the United States pharmacopeia. We have digitalis, atropin, strychnine, herbs that are of value today.

Q. They are extracts?

A. Many of these herbs have been used at many times and those which are of value are used.

Q. Do I understand you to say that herbs are to some extent beneficial?

A. When they have been shown to be beneficial by actual evidence. There are some herbs which are useful. There are none in Fenugreek Tea which are useful.

Q. Doctor, would you say that Lelord Kordel's products in themselves are harmful?

A. They are definitely harmful in that they encourage a patient with a serious disease to experiment with himself when he should seek medical advice and precise diagnosis and therapy.

647 Q. Then you are opposed to anyone who did not go to a physician but may go to a chiropractor or an osteopath, or one who gives herbs and diets as treatment, is that right?

A. No, I am not. I am opposed to that in so far as the good of the health of that individual is concerned. He has his own right to do or seek the sort of health advice he desires, but nevertheless they should not, in my opinion, people are ignorant of the importance of fatal diseases and should not be encouraged or misled by advertising and

claims to seek the advice of an individual who cannot give proper diagnosis and therapy for their condition early.

Q. Have you examined this, what you term advertising, in these documents?

A. I have read these here today.

Q. Have you seen these before?

A. I saw some of it last Sunday.

Q. When?

A. Last Sunday.

Q. Where did you see it?

A. At the Court House.

Q. This Court House, in this building?

A. The new Post Office Building.

648 Q. The new Post Office Building?

A. The new Post Office Building.

Q. What took you over there?

A. I went over there to consult with one of the gentlemen; I do not recall their names.

Q. In regard to the trial of this case?

A. What is that?

Q. Was it in regard to this case?

A. It was in regard to the written matter in these exhibits to which I have been referred this morning.

Q. In examining the periodicals, Doctor, did you observe in many parts that the people were told to consult their physician?

A. I did not see that.

Q. You did not see it. Then you did not make a study of the whole book, did you?

A. I did not.

Mr. Breen: That is all, Doctor.

Mr. Eardley: That is all.

(Witness excused.)

Mr. Breen: May we take a recess now? I have an appointment.

The Court: The Court will recess until 2 o'clock.

(And thereupon the Court recessed to convene at 2 o'clock p.m. of the same day, Thursday, March 21, 1946.)

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Consolidated Cause 45 CR 488) * *

Before Judge Walter J. LaBuy.
Thursday, March 21, 1946, 2 o'clock p. m.
Court met pursuant to recess.

Present:

Mr. Robert C. Eardley,
appeared for the Government;
Mr. James W. Breen,
appeared for the Defendants.

The Court: Proceed.

DR. A. J. CARLSON, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. Will you state your name, please?

A. A. J. Carlson.

Q. Where do you live, Doctor?

650 A. 5228 Greenwood Avenue, Chicago.

Q. Are you a licensed physician, licensed to practice medicine and surgery in the State of Illinois?

A. I am not.

Q. What is your present occupation, Doctor?

A. Why I am a retired Professor of Physiology at the University of Chicago. I am engaged in work, and have been since my retirement, with the Federal Government Office of Scientific Research & Development. I am engaged in the research. I am consultant in several phases of industrial poisons, industrial medicines. I am chairman of the Executive Committee of the Council of the American Association for the Advancement of Science.

Q. Doctor, before you go into that, where did you receive your preliminary training and education?

A. Well, if the Court please, you ask me what I am doing now. I received my Bachelor and Master's degrees from Augustana College in Rock Island, Illinois, 1898 and

1899; then I received my Ph. D. degree in physiology from Stanford University, 1902.

Q. After you finished your elementary training, what if any specialized work did you go into, Doctor?

A. What do you mean, elementary training? The 651 Ph. D. degree is not quite elementary.

Q. No, I mean your B.S. and S.M. degrees?

A. I say, I received my Ph. D. in physiology at the Stanford University in 1902.

Q. Doctor, after you had received your doctor's degree, did you specialize in any particular work?

A. I did. I specialized then in biology and physiology, that is the degree I had.

Q. What did you do after that, Doctor?

A. Well, I was Research Associate of the Carnegie Institution of Washington for one year. I was on the faculty of the University of Pennsylvania Medical School for a short time in 1904, and then I was called to the University of Chicago and have been there ever since 1904.

Q. What were your duties at the University of Chicago, Doctor?

A. My duties were research, fundamentally biology in medicine and teaching in the medical school.

Q. Have you done any special work in research in the fields that you are now associated with?

A. Oh yes. I have been at that for nearly fifty years in many fields. Stomach, intestines, kidneys, the nervous 652 system, immunity, nutrition, thyroid glands. I have covered many fields with my hundreds of graduate students.

Q. Doctor, have you done any lecturing in your field?

A. Naturally teaching in the university was my work.

Q. And outside of the United States?

A. Oh yes. Yes, I have attended the International Congresses in my specialty in the fields of medicine, beginning 1909 in Vienna; three years later in Groningen, Holland. Later in Edinburgh. Later in Stockholm. Later in Boston. Later in Leningrad and Moscow. And in 1935 I spent three months in China under the auspices of the Rockefeller Foundation, lecturing in the medical field.

Q. What places did you lecture in China, Doctor?

A. In Peiping, Nanking, Shanghai, Chungking and other places.

Q. What did you do during the last World War, Doctor?

A. I was in the Army Medical Corps, Sanitary Division of the Medical Corps dealing with foods and nutrition, nearly all the time with the American Expeditionary Forces in France and England. And after the Armistice in December, 1918, I was drafted to the American Food Relief Administration under Herbert Hoover, and worked under Hoover in the food relief in the war devastated 653 countries until August, 1919 when I returned to the university and got out of the Army.

Q. What were your duties under the Hoover Commission, Doctor?

A. Particularly to determine the food needs and the degrees of famine in Yugo-Slavia, in Austria, Czechoslovakia, Poland, the Balkan provinces and Finland, and that was to determine and arrange and organize an extra meal a day for the needs of those starving children in those countries.

Q. Do you hold any honorary degree from the University of London?

A. In London, and Lund, yes, I have an honorary M. D. from the University of Lund.

Q. When were you in Boston, Doctor?

A. Oh, somewhere back during World War I, in '16, '17, or '18, I don't remember, because I have had so many honorary degrees since then I do not keep track of them.

Q. That was because of your outstanding work in the field of nutrition?

A. I would not say that. In the field of medical sciences, and nutrition which is part of medical science.

Q. Doctor, what societies are you a member of here in the United States?

654 A. Well, I am a member and former secretary and former president of the American Physiological Society. I am a member and former president and former secretary of the Federated Biological Societies. I am a member of the Institute of Nutrition. I am a Fellow of the American Medical Association, and former president and secretary of the Division of Biology & Pathology. I am a member of the Institute of Medicine, and Society of Internal Medicine; Chicago Pathological Society; Chicago

Gynecology Society; Academy of Pediatrics; and I have forgotten the names of most of the American societies. I am a member of the Harvey Society, and the Society of Biology & Medicine; the American Biological Society, former president.

I am a member of the National Academy of Science, National Research Council; American Association for the Advancement of Science, president in 1944. There are others I cannot remember in this country.

Q. Doctor, do some of these societies you mention require a special ability to be a member in qualification?

A. All of them.

Q. Doctor, are you a member of any societies of foreign countries?

655 A. Yes. I am a member of the Biological Society of France; Medical Association of Argentine; Medical Society of Sweden; Physiological Society of China, and one or two in Germany, I have forgotten their names now, way back when.

Q. Doctor, were you doing any special type of work during World War II in connection with the war effort?

A. Yes. I was consultant in the medical aspects of aviation medicine, and I was on the committee of secret work dealing with the rehabilitation of certain phases and certain types of war wounds, which I am still engaged in, in the U.S.R.D. The U.S.R.D. took over the National Academy of Sciences and has taken over their work.

Q. What did you do while you were consultant on aviation medicine?

A. Well, I am not at liberty to tell all of that yet, but that had been started before the war.

Q. I see, Doctor. Have you published any textbooks, Doctor, or written any chapters in textbooks?

A. Well, you might call them textbooks. I, together with my pupil, Dan Johnson, wrote a book some years ago entitled "The machinery of the body." That may be called a textbook.

I wrote a monograph myself, many, many years
656 ago on the control of hunger in health and diseases, dealing particularly with my research in that field, the research of myself and my pupils.

I have written several hundred research reports for sci-

entific journals. I have written chapters on vitamins in other books; chapters on aging in other books; and so forth and so on.

Q. Doctor, I show you Government's Exhibit No. 25 and Government's Exhibit No. 24. Doctor, assuming a product called Gotu Kola; and assuming further: "Hydrocotyle asiatica fortified with iron sulphate."

Assuming further:

"Directions: As a dietary supplement for experimental use. One to three tablets daily. In addition to furnishing four grains of Hydrocotyle asiatica, each tablet supplies approximately 75 per cent of the minimum adult daily requirement for iron derived from ferrous sulphate. The need in human nutrition for hydrocotyle asiatica is not established."

Doctor, assuming further:

"Does this exotic plant from Ceylon hold the answer to man's search for the secret of rejuvenation?"

657 "Can emotion be explained—defined; analyzed; charted; its source pointed out with scientific accuracy? Hardly; but we experience unmistakable reactions to the mysterious force so named; we sense it, we feel it, we thrill to it—instinctively; unerringly we know it when it stirs within us. We know that a mysterious, elusive urge is the cause, but we can put our finger only on the effect.

"Just as elusive, just as mysterious, just as intriguing are the effects of their 'Gotu Kola' herb (Hydrocotyle Asiatica) on the natives of Ceylon, that fascinating pearl-like island off the Indian coast. The results of consuming that strange, Oriental herb indicate a rich, natural, seemingly secret source of dynamic energy. And while those primitive peoples know nothing of the whys and wherefores of the effects produced, they do know that they are very real.

658 "After generations of experience, after ages of intimate, first-hand knowledge, the natives of the most vigorous Singhalese tribes attribute their marvelous physique, their full, vibrant physical existence as their philosophical outlook on life solely to their precious 'Gotu Kola.' And their conclusions are fully supported by European and American travelers, explorers, scien-

tists, and writers—some of whom have discovered native 'Gotu Kola' enthusiasts claiming to be over 100 years of age who appear but 65 or 70.

"Vincent de Silva, writing in the Ceylon Daily News, has the following to say about 'Gotu Kola':

"Man's dream has always been to discover the secret of perpetual youth, and many men have devoted all their lives to this problem.

"We have heard of Ponce de Leon who sought restoration of youth from the waters of a charmed fountain in Florida; the Kintan of the Chinese; the Red Elixir of Geber, and the Vital Essence of Augsburg. Not so long ago a Swiss named Spalinger claimed to have found a serum which prolonged life to a hundred and fifty years.

659 "Instead of believing that the secret of perpetual youth could be thus obtained, they should have tracked an elephant in the wilds of Ceylon and observed what the behemoth ate for his lunch. Ten chances to one it would have been "Gotu Kola." Had they done this, the world would be growing this life-giving plant as commonly as lettuce and there might not be on earth, today, anyone with a body that could truthfully be termed senile.

"'Guta Kola' has a very ancient history. It was known to writers of India and Ceylon hundreds of years ago—always as a longevity plant. It is a small herb that creeps along the ground, having fan-shaped leaves of a pale green color.

"It is claimed that this herb will increase the vitality of 70 and 80 to that of 40. The leaves have a marked energizing effect on the cells of the brain, and can preserve it indefinitely.

660 "Baron Gogern, the scientist, tells us that an old elephant, in captivity at Deshapur, was once rejuvenated and bore a calf after "Gotu Kola" was sent for and mixed in her diet. A few of the leaves eaten every day will strengthen and re-vitalize worn-out bodies and brains to a remarkable degree and will prevent brain fag and nervous breakdown.

"To realize the truth of these assertions, it is only necessary to look back a few hundred years into the

medical history of the East.

““Two leaves a day will keep old age away.” This is the claim made by the ancient Singhalese for “Gotu Kola,” this famous longevity plant, which grows in Ceylon. In India, the leaves are extensively used by religious orders to develop spiritual power, and to prolong the existence of the brain.

“Mary E. Forbes of America, the tutor to Her Highness, the widowed Queen of Mandi State in Punjab, commenced eating “Gotu Kola”; after a few months she never knew what brain fatigue was, and felt so physically well that she could not find enough to do to use up her energy.”

“The Singhalese almost worship ‘Gotu Kola.’ He swears by its beneficence, desiring it above all other foods to an almost fanatical degree. This extraordinary tribute to ‘Gotu Kola’ is fully corroborated by some European authorities, who have known the facts for years.

661 “The men who brought ‘Gotu Kola’ to America know its effects from personal experience, and it is only in the same way that others can come to know them. It may seem to some a simple and easy matter to bring this herb from the jungle fastness on the other side of the world to our own country. Like other herbs, ‘Gotu Kola’ has its ripening and drying season, consequently any move to secure it in quantity must be made a long time in advance.

“Gathering crews must be organized. They must be prepared to penetrate the jungle, to cut their way through the dense growth of the tropical forests, fighting the intense heat, torrential rainstorms, insects, wild beasts and poisonous reptiles. Food, camp, working and living equipment must be taken into the jungle, for the camp must remain long enough to sun-dry the herb on the ground.

“Because of today’s difficulty in importing ‘Gotu Kola’ only a fortunate few can experiment with it. The person who has an opportunity to procure a supply of this herb should consider himself an individual upon whom the gods smile benignly.

662 “What is there about this herb that inspires such

avid desire? What precious gift has Nature locked within 'Gotu Kola'?

"Nature has taught us to outfly the bird, outswim the fish and outspeed the deer—shall we then doubt that in her resources she holds for our discovery the secret of perfect physical life that she has revealed to these? She has taught us to chain the rivers, harness the lightnings and make a whispering gallery of sea and air. Is it then too much to expect that she will reveal to us her formula for more abundant power and more perfect living?

"Have we found it in 'Gotu Kola'; in this plant from the jungle? The testimony of beasts and birds, of the natives and wise men of Ceylon and India and of a host of scientific and lay people of Europe and America seems to indicate to a reasoning mind that possibly we have.

"How precious is life! Though today be twenty-four hours of misery, 'hope springs eternal in the human breast' and we carry on, ever looking for a brighter tomorrow, in which we shall enjoy a fuller, richer physical existence.

663 "For those fortunate enough to obtain it—a brighter tomorrow may lie in 'Gotu Kola.' As countless others have found brighter days in the indefinable 'something' which their systems apparently drew from 'Gotu Kola.' The outward manifestations are evidenced by a general enhancement of the physical life, a brighter, keener mental activity, a restimulated ambition and a renewed optimistic outlook.

"Those who are below par physically and mentally—and who have the opportunity to determine what 'Gotu Kola' may mean to them, will better appreciate the words of a noted scientist in describing natives of Ceylon to whom this plant is available:

"I wish you could see these wonderful people, with their erect posture, their sharp eyes and velvety skin. Their limbs are as if carved from ebony, of splendid proportion, their chests deep, their bodies firm, with gracefully curved hips and flat abdomens. The rhythm of their motions, their gracefulness and poise, their stately bearing, the intelligence of their eyes and their

pleasing laughter, all show them blessed with an extraordinary physique.' 664

"'Gotu Kola' in convenient tablet form, is available in certain health food stores. The men who brought the herb to America say that one tablet daily is usually sufficient for those who are willing to experiment for themselves with 'Gotu Kola.'

"We quote again from Vincent de Sylva's article:

"'It is the belief of the Singhalese and the Indians also, that only a few leaves of this herb are necessary, daily, to bring about a gradual return to health and strength, provided the body is exposed to the sun. If this is eaten daily, it is said, that disorders like rheumatism, neuritis and nervous breakdowns could be banished entirely from the constitution—and would be an important factor in breeding a better race. It is claimed that 'Gotu Kola' will increase the span of life by 50 years, developing a brain incapable of breaking down for a very long time.'

"'Gotu Kola' Tablets are now available for those who wish to try for the benefits described for 'Gotu Kola.' Because of difficulties in importing this plant, 665 we would suggest that those interested stock up while present supplies are available. Many are now experimenting with only one tablet a day and reporting gratifying results.

"Box of 50 tablets is only \$1.50."

Mr. Breen: Have you that order blank there, the bottom line? I would like to have it. I haven't one of those copies.

Mr. Eardley: I do not believe the order blank, your Honor, has anything to do with the text of the exhibit.

Mr. Breen: I am not so sure about it. Let's see what it says.

(Mr. Eardley handed document to Mr. Breen.)

Mr. Breen: I think that we ought to have read that part indicating purely experimentation, something that can be—

The Court: Have you concluded your question, Counsel?

Mr. Eardley: All but the ending of the hypothetical question, with the reading of the text, I have, your Honor.

The Court: Proceed.

Mr. Eardley: All right.

666 By Mr. Eardley:

Q. Doctor, keeping in mind the product Gotu Kola; and the labeling and its contents, do you have an opinion, based upon reasonable medical certainty, and from your training, education and experience, as to whether such a product so used might or could be effective to do all of the things indicated in this exhibit?

Mr. Breen: I object for the reason there isn't a word in that, you know, that has been read, that is said by the defendant. It is wholly a quotation of what somebody else has said in other countries.

The Court: Overruled.

The Witness: Yes, I have.

By Mr. Eardley:

Q. What is rejuvenation, Doctor?

A. Rejuvenation is ordinarily understood by laymen as turning back the time clock in the life of the individual. That is to say, changes in the heart, in the intestinal tract, in the brain, in the ovaries and the testes that go on with time, say at forty or fifty, rejuvenation means turning back those changes to the conditions of these organs or the brain at twenty or thirty.

Sometimes the term rejuvenation also means the delaying of the aging changes so that they come on late.
667 But ordinarily rejuvenation means that you have lost your youth, you have aged, and now you are getting back to it. It is the turning back of time of the living organism.

Q. Doctor, would this exotic plant from Ceylon hold the answer to man's search for the secret of rejuvenation?

A. By no means. This, as I followed the reading, if the Court please, is the panacea, is a cure-all.

Now, the main factor in the aging of the species of the individual is hereditary.

The rat normally lives two or three years; man sixty or seventy; and elephants, two or three hundred. The difference in the individual or family within the specie like the human family longevity which is within the species, is particularly hereditary, and anything you may take after birth will have no effect on your hereditary constitution.

Now, the other factors that determine longevity are the individual's living and his environment and infection, bad

housing, poor food, even such things as susceptibility to tuberculosis and cancer, are shown to be particularly hereditary; the early breakdown of the brain with later psychosis are particularly hereditary.

668. Nothing that you can take will affect heredity; and unless this was a panacea that would build good houses, give good environment, and prevent all infection and all cancers, it could not do what is claimed.

I just don't know how to describe it soberly because it is so fantastic and, of course, untrue.

If the Court please, I should know something about this, because I have given a good deal of my last fifteen years in company with the most competent biologists and medical men of the United States and Europe to study the factors, the causes and the problems of aging in man and animals.

Q. Doctor, keeping the product in mind and referring to the second paragraph on the first page; and assuming further, Doctor:

"Just as elusive, just as mysterious, just as intriguing are the effects of their 'Gotu Kola' herb (Hydrocotyle Asiatica) on the natives of Ceylon, that fascinating pearl like island off the Indian coast. The results of consuming that strange, Oriental herb indicate a rich, natural, seemingly secret source of dynamic energy."

669 Doctor, do you have an opinion as to whether or not taking this product according to the directions, would give one dynamic energy?

A. I have.

By Br. Breen: I object, your Honor. I desire to object on the further ground of objection, and that is, it clearly appears in the information that this pamphlet he has read from did not accompany the product through interstate commerce. Six months, I think, intervened between the arrival of the periodicals and the product.

The Court: Overruled.

By Mr. Eardley:

Q. You may answer.

A. Well, for a product to yield energy directly it must be a food product like proteins, like meat, or bread or sugar, fat, things like that. Those are sources of energy to man and animals.

Now, that amount of energy, in that sense, these pills are entirely inactive.

Now, it could, with some allowance for ignorance in expression, be held that if the tablet, if the Court please, contains something which would accelerate the living processes, or stop the inhibitory processes in a sick person, it might be said with some truth that the tablet yields 670 energy. It would not be scientifically true but on the whole true.

Now, there is nothing, according to my information, in this plant-extract that will do that. There is a little iron, but the cases of impairment of energy in the human body from deficiency of iron, are rare.

There is a little iodine in there, in the tablet. Whether that iodine is available to the body, I do not know. In cases of extreme iodine deficiency or iron deficiency, it would have some value, but in the sense of energy, that is misleading and untrue.

Q. Doctor, keeping the product in mind with its directions, and assuming further, referring again to the exhibit that you hold:

"After generations of experience, after ages of intimate, first-hand knowledge, the natives of the most vigorous Singhalese tribes attribute their marvelous physique, their full, vibrant physical existence and their philosophical outlook on life solely to their precious 'Gotu Kola.'"

Doctor, keeping the product in mind, and what has just been read to you, do you have an opinion on that statement that was just read to you?

A. I have.

671 Q. What is your opinion?

Mr. Breen: I object, that is entirely an historical statement. That is all it is, your Honor.

The Court: Overruled.

A. My opinion is that that statement is of no scientific bearing or significance. The Singhalese are a free people; some of them well, some of them sick. Some of them are very primitive people without the methods of science and the methods of modern medicine. What they are thinking, of course, has frequently no relation to fact. They are not in position to say what their good health of body and life

is due to. And, secondly, this is a quotation from an apparently popular writer in an Indian newspaper.

By Mr. Eardley:

Q. Doctor, keeping the product in mind with its label and contents, and assuming:

"Vincent de Silva, writing in the Ceylon Daily News, has the following to say about 'Gotu Kola':

"'Man's dream has always been to discover the secret of perpetual youth, and many men have devoted all their lives to this problem.'"

Doctor, do you have an opinion on that statement?

672 A. Yes.

Q. What is that opinion?

Mr. Breen: I object; and may the record show, your Honor, an objection to all these questions to save time?

The Court: Yes.

The Witness: My opinion is that some people sometimes dream about perpetual youth, but those who know something about life, about human nature, know that that is nothing but wishful thinking or hopes. There is nothing that will stop the mechanism of time in the living machinery; nothing known. We can accelerate by unfavorable conditions, by diseases, by poor housing, bad living, not sleeping enough, but the time clock of every organ runs just the same. It is a dream of a person who does not understand their human life or nature. Put out by a responsible concern, it is reprehensible and artistic lying.

By Mr. Eardley:

Q. Doctor, keeping in mind this product with its label and contents, and assuming, Doctor:

673 "Instead of believing that the secret of perpetual youth could be thus obtained, they should have tracked an elephant in the wilds of Ceylon and observed what the behemoth ate for his lunch. Ten chances to one it would have been 'Gotu Kola.' Had they done this, the world would be growing this life-giving plant as commonly as lettuce and there might not be on earth, today, anyone with a body that could truthfully be termed senile.'"

Doctor, do you have an opinion on that particular statement?

A. I have.

Q. What is your opinion, Doctor?

A. My opinion is that the longevity of one who lives in Ceylon or anywhere else has nothing to do with this herb. That is in the heredity; and the elephant, as written there and certainly in this country or in the Orient, lives mainly on other things and not on this herb; so that is out so far as the elephant is concerned.

And the other statement that if we grew this and ate it like lettuce, that there would be no person that could be described as old, is perfect stupidity and as expressed to the layman it is misleading. It is just not in the cards, if the Court please.

675 Q. Now, Doctor, still keeping this product in mind with its label and contents, and assuming:

"It is claimed that this herb will increase the vitality of 70 and 80 to that of 40. The leaves have a marked energizing effect on the cells of the brain, and can preserve it indefinitely."

Do you have an opinion on that statement, Doctor?

A. I do.

Q. What is your opinion?

A. My opinion is that it is just one added untruth, one added absurdity, one added misleading statement, that the functioning or vitality of the brain cells can be maintained indefinitely. Indefinitely, of course, means without the end of time, and that is immortality. That is not in the body or the brain cells.

Now, to do that the brain cells do not stand alone. The brain cells depend on food, they depend on the alimentary canal, they depend on the heart and the blood; they depend on the condition of the blood vessels, and it would have to prevent the hardening of the blood vessels. It would have to keep every cell body in every organ normal and young in order to maintain these cells. And even that would
675 not help.

Q. Doctor, still keeping the product in mind with its labeling and contents, and directions; and assuming further:

"Baron Gogern, the scientist, tells up that an old elephant, in captivity at Deshapur, was once rejuvenated and bore a calf after 'Gotu Kola' was sent for and mixed in her diet. A few of the leaves eaten every

day will strengthen and re-vitalize worn-out bodies and brains to a remarkable degree and will prevent brain fog and nervous breakdown."

Doctor, do you have an opinion on that statement?

A. Yes, I have.

Q. What is your opinion, Doctor?

A. Well, there are two things in there concerning that story about the elephant; that is not quite complete because even with an old female elephant it takes more than this tablet to get a baby.

Now, as to the added elements in there of virtually rendering the uterus and the brain immortal, so it does not fatigue, it is just more of the same junk. It would have to be a corrector of defective heredity; it would have 676 to be an absolute preventative against cancer; against infections; against virus; against the stupidities of life; against the accidents of life; to absolutely prevent fatigue and degeneration. It is just not in the cards.

Q. Doctor, keeping the product in mind and the label and directions, and contents; and assuming further:

"Two leaves a day will keep old age away.' This is the claim made by the ancient Singhalese for 'Gotu Kalo,' this famous longevity plant, which grows in Ceylon. In India, the leaves are extensively used by religious orders to develop spiritual power, and to prolong the existence of the brain."

Do you have an opinion on that statement, Doctor?

A. I have.

Q. My opinion is that it is just more of this misinformation, this baseless hope or possible intent to deceive. It is false, it is baseless.

Now, there are people, peculiar people, who claim they will never die. I have met such people, but I have also seen their death certificates. So that wishing just does 677 not help. And the same way with this alleged miracle tablet.

Q. Doctor, still keeping this product in mind with its labeling and directions and contents, and assuming further:

"Nature has taught us to outfly the bird, outswim the fish and outspeed the deer—shall we then doubt that in her resources she holds for our discovery the

secret of perfect physical life that she has revealed to these? She has taught us to chain the rivers, harness the lightnings and make a whispering gallery of sea and air. Is it then too much to expect that she will reveal to us her formula for more abundant power and more perfect living?"

Do you have an opinion on that statement?

A. I have.

Q. What is your opinion?

A. My opinion is that that is interesting fiction.

Now, the men who have developed the airplane to out-fly the bird, and that kind of thing, are the men of Europe and America on the whole who have not had the advantage of this marvelous plant from Ceylon, so far as I know.

They have done it without this plant. It is not a bad
678 fiction as writing goes, like a murder mystery, but it has no basis in science or medicine.

Q. Doctor, keeping this product in mind with its contents, labeling and directions, and assuming further:

"I wish you could see these wonderful people, with their erect posture, their sharp eyes and velvety skin. Their limbs are as if carved from ebony, of splendid proportion, their chests deep, their bodies firm, with gracefully curved hips and flat abdomens. The rhythm of their motions, their gracefulness and poise, their stately bearing, the intelligence of their eyes and their pleasing laughter all show them blessed with an extraordinary physique."

Doctor, do you have an opinion on that statement?

A. I have.

Q. What is your opinion?

A. My opinion is that is fiction. There is no such paradise with such perfect people, with such a perfect race, on the face of the earth, and I know most of them, most of the races of men in many lands. There may be a few individuals in Ceylon and other places who approach that idea, but otherwise you have the well and the sick;
679 the young and the old in Ceylon as in other places; and more of the sick in the orient than we have here in the United States, although we do not have this marvelous plant generally, so far as I know, and I have never eaten it.

Q. Now, Doctor, still keeping this Gotu Kola in mind with its directions, labeling and contents, and assuming further:

"The men who brought the herb to America say that one tablet daily is usually sufficient for those who are willing to experiment for themselves with 'Gotu Kola.'"

Doctor, do you have an opinion on that statement?

A. I have an opinion.

Q. What is your opinion, Doctor?

A. My opinion is that this is more than fiction.

Q. Why, Doctor?

A. This is dangerous because this is inviting the layman suffering from any of these vague conditions, which may be the effect of any one of a series of illnesses, they are advised to experiment on themselves without knowing what ails them; being told that this is more than manna from heaven—that is just keeping you alive, this will rejuvenate you. That is really dangerous to the public and individual health.

Q. keeping this product Gotu Kola in mind with its labeling, directions and contents, and assuming further:

"If this is eaten daily, it is said, that disorders like rheumatism, neuritis and nervous breakdown could be banished entirely from the constitution."

Doctor, based upon reasonable medical certainty, and from your training, education and experience, have you an opinion as to whether such a product so-used might or could be effective in the cure, mitigation, or treatment of the diseases just mentioned?

A. It could not.

Q. Why, Doctor?

A. Well, some forms of nervous breakdown is in the hereditary constitution; others in the strain and stress of conditions like so called battle fatigue of our GI's in France and in Europe. Not all our soldiers subject to the same strain go loco in the brain. I saw that in World War I. It would have no effect on that.

Secondly, neuritis and arthritis and those conditions, if the Court please, those are secondary effects due to chronic infection and for this remedy to affect them it would have to be a specific against those infectious organisms. And to affect the stability of the nervous

system in those cases of hereditary weakness, we would have had to give it to Adam.

Mr. Eardley: Cross examine.

Mr. Breen: No cross examination.

The Court: You are excused, Doctor.

(Witness excused.)

JULIUS HAUSER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Eardley.

Q. What is your name?

A. Julius Hauser.

The Court: Speak loudly so they all can hear you back there. Keep your voice up. Speak slowly and distinctly.
By Mr. Eardley:

Q. What is your address?

A. 6048 Ingleside Avenue, Chicago, Illinois.

Q. What is your business or occupation?

A. I am a food and drug inspector employed by the Food & Drug Administration, Federal Security 682 Agency.

Q. What are your duties in that capacity?

A. I make factory inspections and the collection of samples; conduct investigations; and whatever other duties are assigned to me by my superior in connection with the enforcement of the Food, Drug & Cosmetics Act.

Q. Were you so employed in that capacity on May 25, 1943?

Q. Yes, sir, I was.

Q. Were your duties you just described the same on that particular day?

A. Yes.

Q. Calling your attention to that date, did you have any particular assignment on that particular date?

A. Yes, I did.

Q. What was that assignment?

A. The assignment was to make a factory inspection of Lelord Kordel Products, Gotu Kola Distributors.

Q. Did you carry out that assignment?

A. Yes, I did. In part on that day and completed the assignment on the 29th of May by another visit to the firm.

Q. Who did you see that particular day?

A. Mr. Lelord Kordel.

Q. Did you have a conversation with him?

683 A. Yes, I did.

Q. Will you relate that conversation at this particular time?

A. On May 25, 1943, Mr. Kordel told me that he was the sole owner of Lelord Kordel's Products. That his wife was the sole owner.

Mr. Breen: I object to any conversation about his wife.

The Court: Is this what he said?

The Witness: That is right. Mr. Kordel told me that—

Mr. Breen: I object to that.

The Court: You mean to that part of it that refers to his wife?

Mr. Breen: Yes, on behalf of Mrs. Kordel, I object. Nothing he said is binding on her.

The Court: Sustained as to the wife. Just state what he said, leaving the wife out.

The Witness: Mr. Kordel refused to furnish me a list of shipments of the product Guto Kalo on the ground that he was not the owner of Gotu Kalo Distributors; that in order to give me a list of the shipments which I requested he would have to have permission of the owner.

By Mr. Eardley:

684 Q. Who did he say was the owner, at that particular time?

Mr. Breen: I object on behalf of Mrs. Kordel.

The Court: I haven't heard the answer yet.

Mr. Breen: I am objecting to the question, your Honor.

The Court: Overruled.

The Witness: Mr. Kordel said his wife was the owner.

Mr. Breen: I move to strike the answer out.

The Court: Sustained.

By Mr. Eardley:

Q. When you were told Lelord Kordel was not the owner of Gotu Kola, did you make any effort to determine who the owner was?

A. Yes, by inquiring who the owner was. I did make that effort.

Q. Did you find out from your inquiry who the owner was?

A. Yes, I did.

Q. Who did you find out was the owner?

Mr. Breen: I object.

The Court: I think he ought to first state the basis. You are asking for a conclusion on this as to who the owner was. He would have to state the basis for that.
685 Your question calls for a conclusion as to who the owner was. I think he should relate the facts.

Mr. Eardley: Strike that last question.

By Mr. Eardley:

Q. From whom did you obtain the information; that is, as to who the owner of Gotu Kola was?

A. From Mr. Lelord Kordel.

Q. Who did he tell you was the owner of Gotu Kola?

Mr. Breen: I object on behalf of Mrs. Kordel.

The Court: Well, the answer is, "He said Mrs. Kordel was"; that is objectionable. She was not present and I will sustain the objection. If he made an investigation, an independent investigation, he may relate the facts, but the statement of one defendant in the absence of the other is not admissible.

Mr. Eardley: I see.

By Mr. Eardley:

Q. In the course of your work, did you make an investigation to determine who the owner of Gotu Kola was?

A. That I did.

Q. In the course of that investigation did you determine then who the owner of Gotu Kola was?

Mr. Breen: I object to the form of the question. Let us find out about the investigation.

686 The Court: That is objectionable.

By Mr. Eardley:

Q. What did this investigation consist of?

A. The investigation was a routine factory inspection in connection with the enforcement of the Food, Drug & Cosmetics Act. The investigation was to determine who operated Lelord Kordel Products, and who operated Gotu Kola Distributors; to find out how those businesses were conducted, and what they consisted of. I found in the course of the investigation that Lelord Kordel Products was owned by, solely owned by Mr. Lelord Kordel; and

that Gotu Kola Distributors was solely owned by Mrs. Lelord Kordel.

Mr. Breen: I object and move it be stricken.

The Court: Overruled. You may inquire on cross examination as to the basis of that statement.

Mr. Eardley: Cross examine.

Cross Examination by Mr. Breen.

Q. From whom did you ascertain that Mrs. Kordel was the owner?

A. From Mr. Lelord Kordel.

Q. Was Mrs. Kordel present?

687 A. No. I did not meet her. She was not present.

Mr. Breen: Then I move to strike the answer out.

The Court: Sustained, so far as the conversation with Mr. Kordel and what he said about Mrs. Kordel in her absence being the owner.

By Mr. Breen:

Q. You never talked to Mrs. Kordel, did you?

A. No, sir.

Mr. Breen: That is all.

Redirect Examination by Mr. Eardley.

Q. Did you get a list of shipments of Gotu Kola?

A. No, sir, I did not get a list of shipments of Gotu Kola.

Q. Why didn't you get a list of shipments?

A. Mr. Lelord Kordel refused to furnish me the list of shipments. He did not furnish me a list.

Mr. Breen: I object, that was gone into in chief, your Honor.

Mr. Eardley: I do not believe—

Mr. Breen: He asked that question.

Mr. Eardley: I do not believe there has been any statement on that.

688 The Court: Yes, he said on direct that Mr. Kordel refused something.

The Witness: Mr. Kordel refused to furnish a list of shipments.

Mr. Breen: He stated that on direct. Now you are asking the same question on redirect.

The Court: I think it is repetition.

Mr. Eardley: I am sorry.

The Court: The Court will recess for five minutes.
(Recess.)

The Court: Proceed, please.

Mr. Eardley: No further question.

The Court: No further cross examination?

Mr. Breen: No, that is all.

The Court: You are excused.

(Witness excused.)

Mr. Eardley: Your Honor, at this time the Government has a certified copy of a statement which was made by the defendant, Lelord Kordel; the certification was made by Hannegan, Postmaster General of the United States. I will show it to counsel here before it is offered.

Mr. Breen: I object on the ground we are entitled to the original.

The Court: Is the original available?

Mr. Eardley: It can be gotten if it is absolutely necessary, Judge, we can have it here tomorrow morning; have a man come in with it from Washington. He can do that if counsel insists, but it will be identical with the certified copy.

The Court: Well, the Court will reserve its ruling temporarily and you talk that over with counsel. Maybe you can agree on it.

Mr. Eardley. All right, Judge.

Will you mark this for identification, Government's Exhibit 28?

(Said document was marked Government Exhibit 28, for identification.)

The Court: Any further witnesses? Suppose you talk to counsel about that.

Mr. Eardley: All right.

Mr. Breen: I don't want to put the government to the expense—

The Court: I did not hear you.

Mr. Breen: I don't want to put the government to the inconvenience of calling the witness from Washington.

The Court: You are not objecting on the ground it is not the original?

Mr. Breen: No.

Mr. Eardley: We will offer that in evidence at this particular time.

690 The Court: Very well, it is admitted in evidence.
(Said document so offered and received in evidence was marked Government's Exhibit 28.)

Mr. Eardley: The government again offers Government's Exhibits A; 1 to 4; 4A; 5 to 7; 7A; 8; 8A, B and C; 9 to 13, inclusive; 13A; 14 to 17, inclusive; 17A; 18; 18A; 19 to 21, inclusive; 21A; 22; 22A; 23 to 27, inclusive; and 28.

Mr. Breen: Now, does that include document where there is an objection pending?

Mr. Eardley: That includes everything.

Mr. Breen: There is an objection pending to the admission of that document that the witness testified he had changed by stamping the red stamp over the post office number after he had received it.

The Court: That objection is overruled and it is admitted; and all of these other documents and exhibits are admitted.

(Said documents, so offered and received in evidence, were marked Government Exhibits A; 1 to 4, inclusive; 4A; 5 to 7; 7A; 8; 8A, B and C; 9 to 13, inclusive; 13A; 14 to 17, inclusive; 17; 17A; 18; 18A; 19 to 21, inclusive; 21A; 22; 22A; 23 to 27, inclusive; and 28.)

691 Mr. Eardley: The Government rests at this time, your Honor.

The Government here rested its case.

Mr. Breen: Your Honor, I think we can save time, if we could recess until tomorrow morning.

The Court: You can organize your case?

Mr. Breen: Yes. We haven't got our exhibits here.

The Court: How long do you think the defense will take? What is your estimate? I am just trying to arrange my calendar.

Mr. Breen: Not over, I would say, two days and I may cut it down to one day.

The Court: All right.

Mr. Breen: Of course, I do not know how long the government will cross examine.

The Court: I am talking about your side alone.

Very well, the Court will adjourn then until ten o'clock tomorrow morning.

And thereupon the further proceedings in this cause were continued to Friday, March 22, 1946, at 10 o'clock a. m.)

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IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Consolidated Cause 45 CR 488) * *

Before Judge Walter J. LaBuy.

Friday, March 22, 1946,
10 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Robert C. Eardley, appeared for the Government;

Mr. James W. Breen, appeared for the Defendants.

Mr. Breen: Your Honor, I believe the record shows the government has closed its case, and I desire to make a motion now to find Mrs. Lelord Kordel not guilty. There is no evidence in the record of any kind.

The stipulation filed in this case, an examination will show that Mrs. Kordel was excluded from any admissions made by Mr. Kordel. The government relies on this stipulation to prove that she was guilty.

They have not proven the commission of any overt act by Mrs. Kordel, of any kind; and this being a criminal prosecution the burden is on the government to prove the defendants guilty.

Mr. Eardley: Your Honor, in reply to counsel's motion here, I wish to call the Court's attention to Government's Exhibit No. 28, which has been admitted in evidence, and to read just a part of this exhibit:

"That the said Lelord Kordel is the owner and operator of an enterprise conducted under the name Lelord Kordel Products, at Chicago, and the said Lelord Kordel and Laura Kordel are owners together of an enterprise conducted under the name Gotu Kola Distributors, at Chicago, Illinois."

The Court: Who is that signed by?

Mr. Eardley: This is signed by both Lelord and Laura Kordel.

Mr. Breen: That is correct, it contains that particular one, but what overt act, what violation of law has she committed? It is not a violation of law to be part owner of this company or of this business. They have got to show

in a criminal case that she has violated some law, she has committed some act.

Mr. Eardley: I believe counsel has lost sight of the fact under this particular Act no intent is necessary.

694 Mr. Breen: It is not a question of intent. It is a question of the government showing that she did an unlawful act.

The Court: Have you a copy of the Act here, Counsel?

Mr. Eardley: Yes, I have. (Handing document to the Court).

I might call the Court's attention to Section 301A.

Mr. Breen: In what?

Mr. Eardley: Of the Federal Food, Drug & Cosmetics Act.

The Court: Well, in the statement signed by Laura as well as Lelord, it states:

"That the said Lelord Kordel and Laura Kordel are the owners together of an enterprise conducted under the name Gotu Kola Distributors at Chicago, Illinois."

Now, the evidence in this case shows that the Gotu Kola product was introduced into interstate commerce, shipped and received.

Mr. Breen: No question about that, your Honor, but where is there evidence that she introduced it?

Mr. Eardley: By Gotu Cola Distributors.

The Court: I think that there is sufficient evidence
695 here to proceed. The Court will overrule the motion.
Proceed, please.

Thereupon, the defendants, to maintain the issues on their part, introduced the following evidence, to-wit:

MRS. LAURA KORDEL, defendant, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Breen.

Q. Speak up so the Judge can hear you now.

A. Yes.

Q. What is your name?

A. Mrs. Laura Kordel.

Q. What is your address?

A. 188 West Randolph.

Q. Are you married?

A. Yes, I am.

Q. Have you any children?

A. Yes, I have two boys.

Q. Did you ever send by interstate commerce any of
696 the product of Lelord Kordel Products or any pamph-
lets?

A. I did not ship anything. My duty at the office was clerical work.

Q. Did you do any work except clerical work for this Product Company?

A. No, nothing else except clerical work.

Q. The Gotu Kola Products Company, is that in existence now?

A. No, the company has been dissolved two years ago.

Q. When was it dissolved?

A. I think it was in May of 1944.

Q. May, 1944?

A. Yes.

Q. Have you had any connection with it since?

A. No, I have not.

Q. It has not conducted any business since, has it?

A. No.

Mr. Breen: Cross examine.

Cross Examination by Mr. Eardley.

Q. Mrs. Kordel, why was Gotu Kola dissolved?

A. Why?

Q. Yes, Gotu Kola Distributors?

697 A. Well, the Post Office told us to discontinue it,
so we discontinued it; that is all I know.

Q. Why did they tell you to discontinue it?

A. I don't know. All I did was sign a paper, and that was all.

Q. Wasn't there a discussion between the inspector and your husband and yourself prior to that time?

A. I was not there at the time.

Q. Where were you when you signed that paper?

A. In the office.

Q. What office?

A. Our office.

Q. Where?

A. 188 West Randolph.

Q. Are you sure you were at that particular place?

A. No.

Q. Where were you then?

A. I don't remember. I am not sure where I signed it at.

Mr. Breen: Show her the document she signed; let her know what she is talking about.

By Mr. Eardley:

Q. This is a copy of the document that is already admitted in evidence.

698 A. I don't remember.

Q. I want you to look that over.

A. I don't remember where I signed it. I signed so many things. I don't know where I signed this one, that is true.

Q. Isn't it a fact, Mrs. Kordel, that you signed that out in California?

A. California? I don't remember.

Mr. Breen: I think it is immaterial where it was signed.

The Court: What is the materiality of that?

Mr. Eardley: To tie her up more closely with the product and its distribution.

The Court: She may answer.

By Mr. Eardley:

Q. Do you recall where you were on June 10, 1944?

A. No, I do not, because I have traveled so much that I do not remember just what I was.

Q. Were you traveling with your husband in relation to the work?

A. Yes, I was.

Q. What sort of work would you do with your husband when you traveled with him?

A. I just went with him on his lectures, that is all.

699 Q. Did you take orders at that particular time?

A. No.

Q. What would you do?

A. I would register the people as they came into the lecture to get their names and addresses for a mailing list.

Q. Anything else?

A. Well, I would sell a few products that were sold.

Q. Did you hand out any of this literature?

A. No, I did not.

Q. Who did that?

A. We did not hand them any Gotu Kola literature at the lectures at all.

Q. I am not asking about Gotu Kola; I am asking if you handed out any literature.

Mr. Breen: I object. She is not included in any information except the one on Gotu Kola.

The Court: Sustained.

By Mr. Eardley:

Q. How much time did you spend on the road with your husband?

Mr. Breen: I object to that as immaterial.

The Court: Overruled.

The Witness: Well, that is hard to say because 700 many times I did not go with him; I stayed home.

By Mr. Eardley:

Q. During 1942 how much of the time did you stay on the road with your husband?

A. That is quite a ways back. I could not remember that.

Q. To the best of your knowledge?

A. Oh, I would say about four or five months.

Q. In 1943, how much time did you spend with your husband on the road?

Mr. Breen: I object to that, your Honor.

A. I do not remember.

Mr. Breen: That does not prove a violation of the Interstate Commerce Act, or the Drug Act in any way.

The Court: Well, it might have a bearing on the question of distribution.

Mr. Breen: She has testified she never distributed—

The Witness: I never sold it.

The Court: She testified she took orders.

The Witness: No, I did not take orders at all, Judge.

The Court: Didn't you say awhile ago you did—

The Witness: Yes, but I did not take orders, written orders, if that is what you mean.

The Court: Take orders or sell?

701 The Witness: Not Gotu Kola, that one is not Gotu Kola at all.

The Court: Her case is limited to Gotu Kola?

Mr. Breen: Yes, it is limited.

The Court: Limit your questions to that product.

By Mr. Eardley:

Q. Didn't your husband discuss Gotu Kola in his lectures?

A. No, he did not, not while I was present.

Q. Never at any time when you were present?

A. Not while I was present, no.

Q. Did he discuss all the other products, though?

A. Yes.

Q. Every one but Gotu Kola, is that correct?

A. He never discussed Gotu Kola.

Q. But he discussed every other product, is that correct?

A. Not everyone.

Q. What other ones didn't he discuss?

A. At times I was not at the lecture in the building, lecture room; I was in and out.

By Mr. Breen: I object. I do not think it has any bearing on her case. Lecturing is not a violation of the Interstate Commerce Act or the Drug Act either.

702 The Court: Sustained.

By Mr. Eardley:

Q. You testified on direct examination you had two children, is that right?

A. Yes, I have.

Q. Where are your children at this time?

A. My children, Woodstock, Illinois.

Q. They are at a boarding school, is that correct?

A. That is correct.

Q. How long have they been in boarding school?

Mr. Breen: I object to that, immaterial.

The Court: I fail to see the materiality of this, Counsel.

I sustain the objection.

By Mr. Eardley:

Q. What is your home address?

A. Where I live?

Q. Yes.

A. 610 West Elm.

Q. What sort of clerical work did you do at 188 West Randolph?

Mr. Breen: I object to that.

The Court: Overruled.

The Witness: Well, my duties were to keep the mailing list in order, do typing and then filing, that is all

703 I did. I have my own office. I see nothing that goes on in his office.

By Mr. Eardley:

Q. How many employees do you have in that office?

A. One besides myself.

Q. How long has that employee been in your employment?

Mr. Breen: I object to that.

The Court: You may answer.

Mr. Breen: Wholly immaterial.

The Court: She may answer.

The Witness: Since January.

The Court: It has a bearing on the question of distribution and introducing the article into interstate commerce.

By Mr. Eardley:

Q. Before that time was there any other employee besides yourself associated with your business?

A. Yes. We have had secretaries and then they leave or get married and we have to get a new one.

Q. Who was responsible for the operation and management of your office when your husband was on the road?

A. I was, naturally.

Q. You took care of all the business when he was away, is that correct?

704 A. Well, yes and no. I do not know enough of the business to take orders or anything.

Q. If different orders came in, you would see that they were filled, isn't that true?

Mr. Breen: I object to that unless it is confined to Gotu Kola.

The Court: Sustained.

By Mr. Eardley:

Q. If an order for Gotu Kola came in when your husband was out, wouldn't you see that it was filled?

A. I never filled Gotu Kola orders because at that time he was always there when the orders came through.

Mr. Eardley: I will ask that the answer be stricken and the question re-read.

Mr. Breen: I move that it stand.

The Court: No, it may stand.

By Mr. Eardley:

Q. All the time that you were in the office and your husband was away, didn't you ever receive an order for Gotu Kola?

A. Yes, but I never filled one.

Q. What would you do with the Gotu Kola orders when they came in?

A. Well, they stayed there and when he got in he
705 got it.

Q. Would you always put them in the files?

A. Why yes. After all, I am not packing orders. I am not that big to do shipping.

Q. Would you make out the billing for the order?

A. No, I never made out the bills.

Q. Who made out the bills for the orders of Gotu Kola?

A. He would.

Q. Would he come to you to type up those orders?

A. Sure.

Q. And would you type up the orders?

A. Well, the secretary would do that if she was there.

Q. Suppose that your husband was out on a long lecture tour and an order for Gotu Kola came in, what would you do about it?

A. Well, I did not type anything about it.

Q. Who would do that?

A. The secretary, naturally.

Q. She was working under your control, didn't you say?

A. Yes, but we never filled a Gotu Kola order.

Q. She would not fill a Gotu Kola order unless you told her to?

A. Yes, sir, but I never told her to.

Q. How much Gotu Kola did you sell during 1942?

706 A. I cannot remember four years ago and I have no way of knowing because I did not do that work. I just did clerical work.

Q. How much money did you take in from the sale of Gotu Kola in 1942?

A. I don't know. I did not even see the books.

Q. Who takes care of the books?

A. My husband.

Q. Did he file an income tax return for Gotu Kola Distributors?

Mr. Breen: I object to that.

A. I don't know. I don't know. I did not ask him personal questions.

The Court: She may answer.

By Mr. Eardley:

Q. Did he file an income tax return for Gotu Kola Distributors for 1942?

A. We filed together.

Mr. Eardley: I ask the answer be stricken and the question re-read. I think it can be answered yes or no.

Mr. Breen: I think it is a sufficient answer. He asked if he filed an income tax report and she said they filed together.

The Court: I think that is an answer.

707 Mr. Breen: I think it is a complete answer.

By Mr. Eardley:

Q. Did you have an accountant in your office?

A. Not to my knowledge. We do have one come in, but I mean not one there steadily every day.

Q. What is the name of this accountant that you had during 1942, '43, '44 and '45 in relation to your accounts with Gotu Kola?

A. As I told you before—

Mr. Breen: I object, '44 and '45 has nothing to do with Gotu Kola. She is on trial only on the Gotu Kola count.

The Court: Well, the question is limited to the Gotu Kola counts. She may answer.

The Witness: As I told you before, I did not do any of the work in his office. I just did clerical work. I do not know what comes in and out or who comes in and out or what they discuss.

By Mr. Eardley:

Q. Will you describe what you mean by clerical work, Mrs. Kordel?

A. Clerical work is typing and filing. We get in these names and I just keep the files in order, change the addresses and keep the plates in order and everything.
708 I do not do secretarial work at all.

Q. Would you send out letters?

Mr. Breen: I object.

A. No, I did not. That is not my department.

The Court: Overruled.

Mr. Breen: I call attention, this must be limited to Gotu Kola.

The Court: That is the understanding.

Mr. Breen: Counsel should make it clear. I think the witness is testifying generally.

By Mr. Eardley:

Q. Did you write any letters in regard to Gotu Kola?

A. I never wrote any letters. That is not my job.

Q. I asked you, did you ever write any letters. Can you answer that yes or no?

A. No.

Q. You never have written a letter in regard to Gotu Kola during the time that you were operating the business while your husband was away, is that correct?

A. That is right. I do not remember writing any letters.

Q. You would never write any letters of any kind, is that right?

A. No, I did not. Clerical work. The secretary 709 does the letter writing.

Q. Would you dictate letters and then sign them?

A. No.

Q. In regard to Gotu Kola?

A. No, not to my knowledge. I don't remember.

Q. It might be that you did write some letters in regard to Gotu Kola at that time, is that correct?

A. Well, I don't remember, really. If I did, I would say it.

Q. Would you keep the books for the Gotu Kola Distributors?

A. I did not do any book work.

Q. Were you in charge of the office during this particular time?

A. Yes, but I only did clerical work. I let the mail pile up or forward the mail to him.

Q. What did you mean when you signed this affidavit and swore to it?

A. I don't know. I just signed it. I signed so many papers, I just signed that one.

Q. Didn't you read it before you signed it?

A. No.

Q. Did you know it was under oath?

A. Yes.

710 Q. And you are bound by any statement you made?

A. All I was told, we were supposed to discontinue Gotu Kola and signed that to prove we would not sell it, and we haven't sold it since we signed that.

Q. But you did sell it before that time, is that correct?

A. I did not; no, I did not sell it, myself.

Q. Did Gotu Kola Distributors sell it?

A. It was sold before that, naturally.

Q. Did Gotu Kola Distributors sell it?

Mr. Breen: I object.

By Mr. Eardley:

Q. Can you answer yes or no?

Mr. Breen: I object unless the time is limited to the information.

The Court: Yes. I do not know what period is stated in there.

By Mr. Eardley:

Q. Did Gotu Kola Distributors sell Gotu Kola on November 6, 1943?

A. How can I remember so far back? You see, as I told you before, I did not do any shipping or anything and I would not really know.

Q. Did Gotu Kola Distributors distribute pamphlets or circulars on or about in November, 1942?

Mr. Breen: I object. Gotu Kola Distributors, your Honor, is a trade name, that is all it is, it is not a partnership, it is not a corporation, it is only a trade name.

The Court: What is the question?

(Question read.)

The Court: Is there a separate organization known as Gotu Kola Distributors?

Mr. Eardley: That is what we—

The Court: Is that separate from the ownership of the business under that name?

Mr. Breen: No, there is not, your Honor. It is a trade name, that is all.

Mr. Eardley: This affidavit does not bear out what counsel has just said. I will read it to counsel.

Mr. Breen: I do not know what it is. I was not his attorney then.

The Court: Read that part of the affidavit.

Mr. Eardley: "That said Lelord Kordel is the owner and operator of the enterprise conducted under the name of Lelord Kordel Products at Chicago, Illinois, and the said Lelord Kordel and Laura Kordel are the owners together of an enterprise conducted under the name Gotu Kola Distributors at Chicago, Illinois."

Mr. Breen: That is right, that doesn't say it is a partnership or a corporation.

The Court: She may answer.

Mr. Eardley: It doesn't say trade name.

The Court: She may answer.

Mr. Eardley: I believe this question can be answered yes or no.

The Court: Do you remember the question?

The Witness: No.

(Question read.)

A. I did not see them distribute them.

By Mr. Eardley:

Q. Did Gotu Kola Distributors distribute circulars and pamphlets in May of 1943?

A. I did not see them distribute it because I did not do any typing work distributing—

Mr. Eardley: I ask the answer be stricken.

The Court: Sustained.

By Mr. Eardley:

Q. Can you answer that yes or no?

A. I could say no because I was not there when it was done.

Q. Where were you during that particular time?

713 A. I told you I have my own room where I do nothing but clerical work.

Q. How large is this office, Mrs. Kordel?

A. My little office is only about, I would say, about 8 feet wide by 12 feet or 14 feet.

Q. How large is your whole office?

A. We have six rooms. I have one of the rooms.

Q. During May, 1943, how many employees did you have in the office at that particular time?

A. '43, we were not in that office.

Q. Where you you in May, 1943?

A. We were in the same building, but another office.

Q. How large was this office that you were in, in 1943?

A. I don't know. I never measured it.

Q. To the best of your knowledge?

A. I don't know. Just like any office that you would use.

Q. Have you any idea about how many feet by how many feet?

A. '43?

Mr. Breen: Ask her how many rooms.

The Witness: I think in '43 we had two rooms.

By Mr. Eardley:

Q. How big were these rooms?

714 A. One was rather large and one was a small office.

Q. How many employees did you have working for you at that particular time?

A. I think one.

Q. What was the name of that one employee?

A. I don't know, we have had so many. You will have to ask my husband that, I don't remember.

Q. Were there Gotu Kola pamphlets there in the office at that particular time?

A. I don't know. Three years ago is a long time.

Q. During 1943, Mrs. Kordel, didn't a great number of Gotu Kola circulars come directly to the office?

A. I don't know.

Q. During that same period didn't a great number of those Gotu Kola pamphlets and circulars go out to your various customers?

A. You see, I am not at the office every day so I cannot say. I do not go there every day on regular hours. I go when I want to.

Q. Did you have any Gotu Kola pamphlets in your office during May of 1943?

A. I don't know, even from '43, I was not familiar with every single thing.

Q. Didn't you have many of them?

A. No, not many.

715 Q. Didn't they come in large bundles?

A. I have never seen large bundles, no sir. They might have come up when I was not at the office.

Mr. Eardley: No further questions.

Mr. Breen: That is all.

(Witness excused.)

Mr. Breen: There are twenty counts, your Honor, in which Lelord Kordel is charged, nineteen outside of the Gotu Kola count; and in sixteen of those counts it clearly appears from the face of the information and is supported by the evidence, that the products or the circulars or periodicals did not accompany the product in interstate commerce transportation.

In three of the counts it did say that they accompanied,

and as to the sixteen counts I think the defendant Lelord Kordel should be found not guilty. I make that for the record.

Mr. Eardley: I believe counsel has misinformed the Court. In looking at the record and at the information it will show that Counts 1 to 4, inclusive, and in the sixth count of the information, that literature was included.

Mr. Breen: I say it was included.

Mr. Eardley: And also in Count 13, in the thirteenth 716 count of the indictment, and 2, 6, 7 and 13.

Mr. Breen: It also says in that same count that they were sent about a month later. There is no evidence here.

The Court: Which count, in which count weren't they, does the record show they were not?

Mr. Eardley: They were sent in thirteen counts of the indictment or information, pardon me, they were sent two days later, Judge. And under the statute we say that they are accompanying literature, and we have the cases.

The Court: That would account for each and every count?

Mr. Eardley: That is right, Judge. I have the cases on that.

The Court: Motion overruled.

Mr. Breen: All right, just for the record.

Lelord Kordel, take the stand.

The Court: The Court will recess for five minutes.

Mr. Breen: All right.

(Recess.)

717 LELORD KORDEL, defendant, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. Breen.

Q. What is your name?

A. Lelord Kordel.

Q. What is your address?

A. 188 West Randolph.

Q. What is your occupation?

A. I am a writer on nutritional subjects, on diet, vita-

mins and minerals, as well as lecturing on the same subjects.

Q. How long have you been engaged in that occupation?

A. I have been writing on health subjects for approximately ten years, and I have been lecturing for, well, I dare say, five years.

Q. How long have you been interested in what you call the proper diet.

A. I have been interested in proper diet for about twenty-four years.

Q. How long have you been marketing your own products?

A. I have been marketing my own products since about January, 1941.

718 Q. Have you written any paper on the subject of diet, herbs and vitamins?

A. I have written a great many papers on the subjects of vitamins, herbs, minerals and nutritional diet subjects in general. These papers have appeared for the most part in health magazines pertaining to diet and nutrition.

Q. Where did you get the material out of which you prepared those articles?

A. By consulting authoritative texts.

Mr. Eardley: I object to that. He is not competent to testify whether the books are authoritative or not.

Mr. Breen: Just leave out that word.

A. By consulting books on nutrition and medicine, diet, minerals, herbs and related subjects.

By Mr. Breen:

Q. Have you had access to a reference library on those subjects or do you own one yourself?

A. Well, naturally, I have access to practically every library in the United States since I have been traveling a great deal and I spend practically all of my available time in libraries picking up new information; and in addition to that I, of course, own my own reference library that consists of several thousand books and at a cost of many
719 thousands of dollars in order to keep up to date on this subject and to be authoritative, in so far as the authorities writing these books are authoritative.

Q. Why are you so interested in diets, herbs; and food concentrations?

A. I am interested—

Mr. Eardley: I object to why he is interested.

The Court: He may answer.

The Witness: I am deeply and enthusiastically interested in diet and herbs and minerals and concentrates because I know that they are doing the people of America a great deal of good.

Mr. Eardley: I object.

The Witness: They are important as an adjunct to our diet.

Mr. Eardley: I object to that. He has not qualified himself to say in what capacity he is acting and I ask that the answer be stricken.

The Witness: I am a lecturer on diet and nutrition.

The Court: It may stand.

By Mr. Breen:

Q. Finish your answer.

A. I believe I did, but would you read my answer, 720 Mr. Reporter?

(Answer read.)

The Witness: We have received many reports from our people—

Mr. Eardley: I object.

The Witness: (Continuing)—who tell us the good that these vitamin concentrates have done for them.

Mr. Eardley: Hearsay.

The Court: Sustained.

Mr. Eardley: I ask the answer be stricken.

The Court: It may be stricken.

By Mr. Breen:

Q. Are you a married man?

A. Yes, I am.

Q. Have you any children?

A. I have two boys.

Q. Two boys. Why do you believe that herbs, vitamins and minerals should be used by people as a supplement to their diet?

A. Because they—

Mr. Eardley: I object.

The Court: Just a minute.

Mr. Eardley: No foundation to show he is qualified to answer.

721 The Court: I believe that is objectionable. I sustain the objection.

Mr. Breen: All right.

By Mr. Breen:

Q. Have you read any government agency published reports?

Mr. Eardley: I object to that. Immaterial.

By Mr. Breen:

Q. That stated—

Mr. Eardley: Just a minute.

By Mr. Breen:

Q. That stated that the diets of the American people were poor in minerals?

Mr. Eardley: I object to that, immaterial.

The Court: Sustained.

By Mr. Breen:

Q. In writing your material, have you consulted books published by the United States Department of Agriculture?

A. Yes.

Mr. Eardley: I object to that, immaterial.

The Court: He has answered. Let it stand.

By Mr. Breen:

Q. Do you think that people get enough vitamin C 722 in the ordinary diet?

Mr. Eardley: I object to that.

The Court: Sustained.

By Mr. Breen:

Q. Now, I will ask you to look at Government Exhibit No. 10, in evidence; I will try to make this as short as I can to get it in.

Will you turn to pages 16 and 17 of Exhibit 10?

A. I have it.

Q. Is this exhibit one of your pamphlets or periodicals?

A. It is. This magazine is published for students and people who attend our lectures. It reports the findings on nutrition, vitamins, and minerals.

Q. Now, turning to pages 16 and 17, you have heard the paragraphs read by the government?

A. I have.

Q. From those pages—

The Court: Pardon me a moment, please.

(Recess.)

By Mr. Breen:

Q. I direct your attention to pages 16 and 17, where

vitamin C is discussed. Tell the Court where you secured that information?

723 A. For the most part—

Mr. Eardley: I object.

The Court: Just a minute. Sustained. I do not think it is material.

Mr. Breen: I offer to prove by this witness, your Honor, and we have the books in court, these articles— and we might as well settle it.

The Court: Well, in the defense of this type of a case, intent is not an element.

Mr. Eardley: That is right, Judge. That is all hearsay.

The Court: What you offer to prove, Counsel, goes to the question of intent. It seems to me every authority I have read states that that intent is not an issue.

Mr. Breen: Intent is not material.

The Court: I mean, the Government does not have to—

Mr. Breen: No, I don't have to prove intent at all, that is not the purpose. My purpose in asking this question is because the government has put on a great number of experts here, who ridiculed every article that has been called to their attention. It was fiction and the work of a peculiarly minded layman, and so forth.

I am going to show that these very articles are incorporated in these pamphlets as a result of what scientists
724 of the highest character published to the world; and I make that offer.

The Court: Well, can you prove that by asking this witness where he got his material?

Mr. Breen: What is that?

The Court: Can you prove that by asking this witness where he obtained the material?

Mr. Breen: That is a preliminary question. I will follow it up.

Mr. Eardley: It doesn't make any difference where this witness obtained his material. It is hearsay. The best evidence is to bring the men who wrote those articles and let us cross examine them. We have no cross examination of the statements that are in that book.

The Court: You, of course, can offer evidence to refute the testimony of the government witnesses, these experts who testified as to the representations that were made for

these different products; but this witness would have to be qualified, in my opinion, as an expert himself before he can testify to that.

Mr. Breen: Well, your Honor, if we produce the articles that they have written, that these men have written—

Mr. Eardley: The articles are not in evidence, your Honor, and the article does not give us an opportunity to cross examine the person to know what he had in mind when he wrote the article.

The Court: Well, it is my opinion it is not a defense to this action for the defendant to testify where he obtained this informaton.

Mr. Eardley: Absolutely.

Mr. Breen: All right, your Honor, we will—I do not think we have to preserve exceptions to the rulings.

The Court: No.

Mr. Breen: That is what I thought.

By Mr. Breen:

Q. Well, did you discuss your products and these periodicals with the Food & Drug Department of the United States Government?

Mr. Eardley: I object to that, immaterial.

The Court: Did you what? I did not hear it.

(Question read.)

Mr. Breen: Prior to the—at any time.

Mr. Eardley: I object, immaterial.

The Court: Sustained.

By Mr. Breen:

Q. Did you discuss it prior to the informations in these cases?

726 Mr. Eardley: I object, immaterial.

The Court: Sustained.

Mr. Breen: Well, for the record, your Honor, let the record show that this same question was put in regard to all the other vitamins and that the objection was sustained.

Mr. Eardley: Well, I do not know what question you are referring to.

The Court: You better state a question, Counsel.

Mr. Breen: I am going to ask the same question to every other vitamin.

The Court: And the question is what? As to whether he discussed it with the Department?

Mr. Breen: No, as to where he got the information on which he based his article.

The Court: Oh, I see.

Mr. Breen: That is the question. Let the record show that; to shorten it up in this way, your Honor.

The Court: Yes.

Mr. Breen: Instead of going on through every one.

The Court: The record may show that the objection is sustained to each and every article.

Mr. Breen: And the same, I have the other question as to the Food and Drugs which was broad enough to 727 include everything.

Mr. Eardley: For the record, I think you better state it, Counsel, so the record is clear in case you are going up on this case.

By Mr. Breen:

Q. Did you discuss with the Food & Drug Administration of the United States Government your articles on each and every one of those vitamins and the vitamins themselves?

Mr. Eardley: Objection.

The Court: Sustained.

Mr. Breen: That question applies to every one.

The Court: Yes.

By Mr. Breen:

Q. What is the name of your concern?

A. Lelord Kordel Products and Nutritional Enterprises.

Q. What is the name of the Gotu Kola concern?

A. It was Gotu Kola Distributors but, of course, that is no longer in existence.

Q. Is that concern in existence?

A. No, it is not.

Q. When did you dissolve it, when did you stop doing business under that name?

A. May, 1944, May or June, one or the other.

728 Q. What connection did Mrs. Kordel have with you on Gotu Kola?

A. Mrs. Kordel and I were partners in Gotu Kola Distributors but, of course, her work, as she mentioned on the witness stand, was confined to the clerical work or detail

work. I took care of finding the material, the writings and shipping and so on.

Q. Did she ever ship any Gotu Kola products?

A. To my knowledge she did not.

Q. Did she have anything to do with the shipment of any products?

A. Not that I remember.

Mr. Eardley: I object to that. He doesn't say he is there all the time. He said he has been—

The Witness: Of course, we have a man who does the shipping.

The Court: You will have to ascertain that on cross examination.

By Mr. Breen:

Q. Do you employ anyone that had charge of your shipments?

A. Yes, we employed a number of people who took care of shipping.

Q. Where were these periodicals shipped from?

729 A. Which magazine are you referring to?

Mr. Eardley: I object, unless he designates which articles and which circulars

By Mr. Breen:

Q. Where was Gotu Kola shipped from?

A. Gotu Kola was shipped from 188 West Randolph Street.

Q. Who shipped it from there?

A. Well, for the most part, I did; it may have been that my former secretary or a packing room employee did it in my absence; but it is some time ago and I cannot remember the certain details.

Q. Where were these various products made that have been introduced in evidence?

Mr. Eardley: I object, immaterial.

The Court: Sustained.

Mr. Breen: Cross examine.

Mr. Eardley: Will you pardon us just a minute. Judge? No cross examination.

The Court: You are excused.

(Witness excused.)

Mr. Breen: We rest.

Whereupon the defendants rested their case.

The Court: Any rebuttal?

730 Mr. Eardley: No rebuttal, your Honor.

The Court: Both sides rest.

How long do you wish to argue?

Mr. Eardley: I will let counsel state.

The Court: What?

Mr. Eardley: I will let counsel state first.

The Court: How long do you wish to argue, Mr. Breen?

Mr. Breen: I really don't know. At least an hour, I think.

The Court: Do you want to proceed with your opening?

Mr. Eardley: We will waive our opening.

ARGUMENT ON BEHALF OF DEFENDANTS

Mr. Breen: Now, may it please the Court, I have searched very diligently and I have not been able to find where the word "accompany" has been, as used in this statute, has been construed in a criminal case by any Circuit Court of Appeals or by the United States Supreme Court. It has been construed in several proceedings, but I think your Honor well knows the rule, the universal rule of the construction of statutes, a rule that is as old as the common law, and that is that penal statutes must be strictly construed, and remedial statutes liberally construed.

731 There are plenty of decisions on both of those points that I would be glad to submit to your Honor.

The Court: I was going to suggest you proceed with the argument and at the conclusion, if you have cases that you would like to cite that you submit a memorandum to support your respective contentions, so that each one of you will submit a brief.

Mr. Breen: Very well.

The Court: So that will save all this time of making notes of all these citations.

Mr. Breen: Well, shall we submit written briefs, your Honor?

The Court: If you prefer to do that instead of oral argument.

Mr. Breen: I would just as soon do it, submit a written brief to your Honor.

The Court: Is that all right with the government?

Mr. Eardley: I thought this was the argument here. The briefs come after the argument.

The Court: If either side wishes to argue, I am not going to deny anybody the right to argue orally.

Mr. Breen: I will argue.

The Court: But I would suggest, however, in the interest of the conservation of time, that you withhold 732 your citations for your brief.

Mr. Breen: Yes, I will, I will do that, your Honor. We will withhold the citations of law and make two arguments.

The information, in many of these counts of the information, it shows that the product and the literature were shipped at different times and in many cases from different cities. The statute says that it must accompany the product.

Now, certainly, a product that is shipped from Springfield and a piece of literature sent from Chicago or St. Louis, is not accompanying the product at all; and many of these articles, as the evidence shows, were sent as merchandise to be sold at a price not given away to the public, and what was not to be sold at a specific price bore the post office number where they were to be addressed and sent by mail.

Now, in one case, one point, one information is the gentleman from Seattle. He said he received the periodical and that it bore the post office numbers and he was supposed to mail it out, but he says "without any authority I put a red stamp over the post office number and I gave it away."

I asked why he put that red stamp over it, and he 733 said "Well, I did it so nobody could mail it that took it."

Kordel did not have anything to do with putting that red stamp over the post office number. When Kordel sent it, it was not to be given to the public, and under the rules of the Post Office it was a violation of the rules; but this man in Seattle, without any authority from Kordel, made that a periodical that could be given away to the public, and if there was any violation of the law in that particular case the violation occurred in Seattle by somebody, and not by anybody in Illinois.

To be more specific as to what the government thinks is

of considerable materiality to the determination of this case and the facts relating to interstate shipment of products and of the circulars, it will be noted the information is careful not to state, and I am talking now exclusively about the Gotu Kola count, that the goods and the circulars were shipped together in interstate commerce. As a matter of fact, the circulars were shipped by the Wayside Press from Mendota, Illinois on or about May 6, 1943.

According to the information and to the evidence, your Honor, six months later a shipment of the product was 734 made by the defendant to the consignee from Chicago, Illinois. At no time did the product or the circulars physically accompany each other during their transportation in interstate commerce.

It is quite clear that the two were never intended for distribution together at the time of the retail sale of the product. The circular, as an examination will show was not a counter circular. On the contrary it was a mailing piece bearing the post office indicia and a space for the name and address; and, moreover, was shipped to the dealer only for addressing by him to his own mailing list. And in point of actual fact the circulars were mailed.

The inspector who gathered the evidence upon which the information is based did not find them together at any time on any of his visits. And the government's witnesses testified they were never together on the counter in that store.

The inspector went into the stockroom and picked up several samples of the circular which, of course, the inspector had a right to do, but obviously a purchaser could not do that. And, the inspector then went to the front of the store and made a purchase.

Now, that label, your Honor, in all these cases and 735 particularly in Gotu Kola, the label produced is neither false nor misleading nor otherwise violative of the law.

The product is not a drug as alleged, but a food and is properly labeled within the contemplation of the Act.

The circulars, from which the statements are quoted, could not be said as a matter of law to have accompanied the product in interstate commerce; hence it cannot be deemed to constitute a part of the label of the product as alleged. Statements made in the circular are not placed within the contemplation of the Drug Act.

The statements made in the circular, and the circular as a whole is not misleading within the contemplation of the Act. And the labels, your Honor, are all in evidence.

In my written brief I will discuss them further. There is nothing false, nothing misleading, no misrepresentation made on the label of any of these products, and an examination of the label will prove that exclusively.

736 CLOSING ARGUMENT ON BEHALF
OF THE GOVERNMENT

By Mr. Eardley:

May it please the Court and opposing counsel: This case is brought upon an Act known as the Federal Drug & Cosmetics Act, under the 1938 revision. That Act sets out many things.

Section 331 of the Act says:

"The following acts and the causing thereof are hereby prohibited."

And Section (a):

"The introduction or delivery for introduction into interstate commerce of any food, drug, device or cosmetic, that is unadulterated or misbranded."

And that is the contention of the Government, and has been all the way along, that the particular drug is misbranded and adulterated, and it has been so stated by many, many witnesses who have all sorts of degrees and who have done all sorts of work in the field of these particular drugs.

I also call the Court's attention to Section 352 of the Act, which informs the Court what a drug is:

"A drug or device shall be deemed to be misbranded unless its label bears adequate directions for use."

737 Now, in these particular exhibits that went in, there was not sufficient directions for use. You had to read "Health Today, Spring 1945" and "What you can do about relieving the agonies of arthritis," and in order to determine what your condition was and what those drugs would relieve.

Now, we will again refer to the section of the Act to determine what labeling means:

"The term 'label' means display of written, printed, or graphic matter upon the immediate containers of

any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper."

Now we again refer to the Act, referring to sub-section (m), which is the term "labeling."

"The term 'labeling' means the labeling or other written, printed or graphic matter, upon any article, or any of its containers or wrappers, or accompanying such articles."

Now, the stipulation that was agreed to between counsel and myself states that the product and the circulars went through interstate shipments to various consignees, and that they were received by these consignees. We brought these consignees into court. For example, let us briefly refer to the testimony of Mr. House, who was the manager of the Western Natural Foods Company in Seattle, Washington.

Now, your Honor will recall he testified that he received Government Exhibit 10; that he placed these circulars on the juice bar; that they were there for distribution, for the purpose of selling Lelord Kordel's products. That in itself shows that they were labeling under this Act.

An individual would stop at the juice bar, fan through the pages of Health Today, Spring, 1945, and find a condition that he thought was similar to the condition that he was suffering from, and he would go to Mr. House or one of Mr. House's employees and purchase such things as Ormotabs, Minerals-Plus, Cetabs, or any of the other products Mr. House carried.

Mr. House further testified that he would wrap up Health Today, Spring 1945 when a sale was made; and the reason for that was it was good business, he was trying to promote business, and that is the theory behind it. Advertising.

This surely shows that the literature accompanied the merchandise.

Now, as counsel said, he is going to prepare a brief but

I have already, prior to the institution or prior to the beginning of this case, given counsel a list of cases which are on all fours with the case we have.

Mr. Breen: They were all civil cases.

Mr. Eardley: Counsel, it doesn't make any difference whether they are civil or criminal.

Mr. Breen: Yes, it does. The Court will decide that.

Mr. Eardley: In the Salisbury case, that particular drug was sent from—

The Court: May I suggest you reserve that for your brief?

Mr. Eardley: All right, Judge.

The Court: The legal aspect of it.

Mr. Eardley: All right, I am sorry.

Going back to the testimony of Dr. Carlson, who was the last government witness in this particular case, he testified that Gotu Kola was definitely dangerous when used as set forth under its accompanying labeling; that people

who would rely on a drug like that might subject themselves to all sorts of conditions. An individual layman

does not know what causes his ailment any more than he knows what causes his relief when he goes to a doctor; but as Dr. Carlson said, these people read this literature and believe it and follow its directions, and as a result they suffer untold agonies and death may even result.

An individual who does these things, or individuals who do these things, such as the Kordels, are nothing more than cheats and robbers. They are robbers of the public. That is the reason this Act was passed, to protect the public purse from people of the type we have here. They have no scruples, they send out their literature and they put in their literature anything they think will sell their product, without any support at all.

Mr. Breen: I object to the word "they," your Honor.

Mr. Eardley: Let me call your attention to Government's Exhibit 1, "What you can do about relieving the agonies of arthritis, by Lelord Kordel. Practical and healthful advice for the millions who suffer from arthritis."

He probably could go on and say the hundreds of millions of people in this world who suffer from arthritis.
741 "Clearly and simply written by America's leading vitamin and diet expert."

He took the stand. Did he qualify himself in that particular category? No, I did not even hear him say that he attended a school. He said he browsed around some books, and still he is going out and selling this junk to the public, to poor people who are led to believe it is helping them, believing they are receiving relief, when the doctors here testified that it was all poppycock. They do not receive any relief. The entire product is of no value at all. And the same person who is relying on that may be suffering from tuberculosis, may be suffering from cancer, and if that person went immediately to a competent doctor and received medical advice, he might be alive today.

Counsel says (and it may be a fact) that these things—and when I say “these things,” I refer to Government’s Exhibits 10 and 1 and all of the other literature that is in evidence—was not supposed to do certain things. It does not make any difference what was supposed to be done or not supposed to be done, the individual who writes this material that is in there is held responsible for it. There isn’t a product that they put out that will cure the ailments that these doctors testified to, they do not know what 742 the cause of it might be. We had the most outstanding arthritis man in the country testify here, and he said time and time again, the only way you can cure arthritis is to see the patient, examine the patient, and prepare a diet for him; that there is no universal cure, there is no universal diet; that the individual has to be seen, he has to be treated as a sick man. But what do these defendants do? They set this up in a booklet to cure these things.

In conclusion, Judge, I just wish to touch on the shipment of these pamphlets or circulars. I believe if the court will refer to our stipulation it will show that the defendants have agreed that they caused the circulars to be shipped.

Mr. Breen: Lelord Kordel caused them to. The stipulation expressly provided—

Mr. Eardley: I will amend that. The defendant Lelord Kordel stipulated that he caused these circulars to be sent. There was not one consignee who testified as to how these circulars should be distributed. They all testified that the circulars were received and they distributed them as they saw fit. One witness even went so far as to say that on occasions, and that was Mr. House, if you will recall, that he

would give them away, that he would give "What you can do about relieving the agonies of arthritis" when he 743 saw a potential customer he would give it away. He said it was good business practice, the reason being he would sell more merchandise. And that is labeling under the Act.

Mr. Breen: You are not quoting him correctly. He said he was not supposed to do it. He did it.

The Court: Well, how many days do you wish for your brief, gentlemen, ten days?

Mr. Breen: I would say about ten days. I am going to trial on Monday but I would say ten days will be all right.

The Court: And you wish to file reply briefs?

Mr. Eardley: I think we better.

Mr. Breen: Yes, I will supply you with a copy of it.

The Court: All right. Twelve days for briefs and five days thereafter for reply; or is that too short?

Mr. Eardley: I would rather have ten days, if I may.

The Court: All right. Very well. After the Court studies the briefs, you will be notified.

Mr. Breen: I think counsel and I can agree, your Honor, that these are misdemeanors and not felonies.

The Court: Yes, I think so.

Mr. Breen: And Mrs. Kordel—

The Court: What is the penalty, Counsel?

Mr. Eardley: A year, and \$1,000 fine on each count.

744 The Court: That is a misdemeanor.

Mr. Breen: The reason is, Mrs. Kordel is going to the hospital Monday and she won't have to be present in court on the misdemeanor.

The Court: No, I think that is correct.

Mr. Eardley: Counsel, will you send us a copy of your brief?

The Court: Yes, you will exchange.

Mr. Breen: We will exchange briefs.

Mr. Eardley: Thank you very much for your courtesy, Judge.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

(Caption—No. 46 CR 1)

STIPULATION

It Is Hereby Stipulated by and between the United States of America and the defendant, Lelord Kordel, trading as Gotu Kola Distributors, through their respective attorneys, that the following are admitted as facts as if testified to herein, to apply in the determination of the issues joined and which are to be taken as facts binding:

45 CR 488

That Lelord Kordel, trading as Gotu Kola Distributors, defendant herein, on or about November 6, 1943, caused to be introduced and delivered for introduction into interstate commerce, via United States Mail Parcel 747 Post, from Chicago, Illinois to Cincinnati, Ohio, consigned to Parks-Phillips Health Foods Co., a consignment of a number of boxes, each containing a number of tablets of a drug; that each of the boxes were labeled in part "Gotu Kola"; that the consignment was received at Cincinnati, Ohio by said Parks-Phillips Health Foods Co.;

That on or about May 6, 1943, said defendant caused to be shipped by the Wayside Press from Mendota, Illinois, via the Chesapeake & Ohio Railway Co., to the said Parks-Phillips Health Foods Co. at Cincinnati, Ohio, a number of circulars entitled, "Does This Exotic Plant From Ceylon Hold the Answer to Man's Search for the Secret of 'Rejuvenation'?" that said circulars were received by said consignee at Cincinnati, Ohio; that there appeared upon said circulars the written, printed and graphic matter quoted in the Information;

That the composition of said drug, Gotu Kola, is as stated on the label.

It is further stipulated that the foregoing admissions made by Lelord Kordel are not to be construed as admissions in any way implicating Laura Kordel as a party responsible for the charges alleged in the Information.

It is further stipulated that the United States of

America may offer testimony to show that Laura Kordel was also responsible for the charge alleged in the Information.

748

45 CR 490

It is hereby further stipulated by and between the United States of America and the defendant, Lelord Kordel, trading as Lelord Products, through their respective attorneys, that the following are admitted as facts, as if testified to herein to apply in the determination of the issues joined, and which are to be taken as facts binding upon the said parties hereto;

That Lelord Kordel, trading as Lelord Kordel Products, defendant herein, caused to be introduced and delivered for introduction into interstate commerce, on or about January 18, 1944, via Railway Express Agency, from Chicago Illinois, to Seattle, Washington, consigned to Dr. McCormick's Natural Foods Co. 1918 Third Avenue, Seattle, Washington, a consignment consisting of (Count I) a number of boxes each containing a number of tablets of a drug, each box labeled in part, "Minerals," (Count II) a number of packages of a drug, each package labeled in part, "Lelord Kordel's Specially-Treated Sarsaparilla Root U.S.P. with Sassafras Bark," (Count III) a number of packages each containing a number of tablets of a drug, each package labeled in part, "Cetabs," (Count IV) a number of packages of a drug each package labeled in part, "Lelord Kordel's Fenugreek Tea"; that there was shipped in the carton containing said drugs a number of printed booklets entitled, "What You Can Do About Relieving the Agonies of Arthritis"; that the aforesaid drugs and booklets were received at Seattle, Washington, by Dr. McCormick's Natural Foods Co.; that there appeared upon said respective booklets the written, printed and graphic matter quoted and referred to in Counts I through IV of the Information.

749 That said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about January 20, 1944, via Railway Express Agency, from Chicago, Illinois to Seattle, Washington, consigned to Dr. McCormick's Natural Foods Co. 1918 Third Avenue, Seattle, Washington, a consignment consisting of (Count V) a number of packages of a drug, each package labeled

in part, "Ferro-B-Plex"; that said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about January 18, 1944, via Railway Express Agency, from Chicago, Illinois, to Seattle, Washington, consigned to Dr. McCormick's Natural Foods Co., 1918 Third Avenue Seattle, Washington, a number of printed booklets, entitled, "What You Can Do About Relieving the Agonies of Arthritis"; that the aforesaid drug and booklets were received at Seattle, Washington by Dr. McCormick's Natural Foods Co.; that there appeared in said booklets the written, printed and graphic matter quoted and referred to in Count V of the Information;

That said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about July 10, 1942, via United States Mail Parcel Post, from Chicago, Illinois, to Seattle, Washington consigned to Dr. McCormick's Natural Foods Co. a consignment consisting of (Count VI) a number of packages, each containing a number of tablets of a drug, each package labeled in part, "Lelord Kordel's Bolax"; that said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about January 18, 1944, via Railway Express Agency, from Chicago, Illinois, to Seattle Washington consigned to Dr. McCormick's Natural Foods Co., a number of printed booklets, entitled, "What You Can Do About Relieving the Agonies of Arthritis"; that the aforesaid drug and booklets were received at Seattle, 750 Washington by Dr. McCormick's Natural Foods Co.;

that there appeared in said booklets the written, printed and graphic matter quoted and referred to in Count VI of the Information.

46 CR 1

It is hereby further stipulated by and between the United States of America and the defendant, Lelord Kordel, trading as Lelord Kordel Products and Nutrition Enterprises, through their respective attorneys, that the following are admitted as facts as if testified to herein to apply in the determination of the issues joined upon the said parties hereto;

That Lelord Kordel, trading as Lelord Kordel Products and Nutrition Enterprises, defendant herein, on or about January 22, 1945, caused to be introduced and delivered for

introduction into interstate commerce on or about January 22, 1945, via the Universal Carloading & Distributing Co., Inc., from Chicago, Illinois, to Seattle, Washington, consigned to Western Natural Foods Co. Seattle, Washington, a consignment consisting of (Count I) a number of packages, each containing a number of tablets of a drug, each package labeled in part, "Cetabs," (Count III) a number of packages, each containing a number of tablets of a drug, each package labeled in part, "Ribotabs"; (Count VII) a number of packages, each package containing a number of tablets of a drug, each package labeled in part, "Kordel Tablets," (Count IX) a number of packages; each package containing a number of capsules of a drug, each package labeled in part, "Kordel-A," (XI) a number of packages, each package containing a number of tablets of a drug, each package labeled in part, "Lelord Kordel's Garlic-Plus," (Count XII) a number of packages, each package containing a number of tablets of a drug, each package labeled in part, "Niamin"; that the aforesaid drugs were received by the Western Natural Food 751 Co. at Seattle, Washington; that on or about February 27, 1945, said defendant caused to be shipped by the National Printing and Publishing Company from Chicago, Illinois, via the Universal Carloading & Distributing Co., Inc., to the said Western Natural Foods Co. at Seattle, Washington, a number of printed bulletins entitled, "Health Today Spring 1945"; that said bulletins were received at Seattle, Washington by said Western Natural Foods Co.; that there appeared in said bulletins the written, printed and graphic matter quoted and referred to in the pertinent counts of the Information.

It is further stipulated that said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about January 22, 1945, via the Universal Carloading & Distributing Co., Inc., from Chicago, Illinois, to Seattle, Washington, consigned to Western Natural Foods Co., Seattle, Washington, a consignment consisting of (Count II) a number of packages, each containing a number of tablets of a drug, each package labeled in part, "Ormotabs," (Count VIII) a number of packages, each containing a number of capsules of a drug, each package labeled in part, "Everm"; that the aforesaid drugs were

received by the Western Natural Foods Co. at Seattle, Washington; that there were shipped in the carton containing the drugs, a number of printed booklets entitled, "Nutrition Guide"; that said booklets were received at Seattle, Washington, by said Western Natural Foods Co.; that on or about February 27, 1945, said defendant caused to be shipped by the National Printing and Publishing Company from Chicago, Illinois, via the Universal Carloading & Distributing Co., Inc., to the said Western Natural Foods Co., at Seattle, Washington, a number of printed bulletins entitled, "Health Today Spring 1945"; that said booklets and bulletins were received at Seattle, Washington by said Western Natural Foods Co.; that there appeared in said booklets and bulletins the written, printed and graphic matter quoted and referred to in Counts II and VIII of the Information;

It is hereby further stipulated that said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about January 22, 1945, via the Universal Carloading & Distributing Co., Inc., from Chicago, Illinois to Seattle, Washington, consigned to Western Natural Foods Co., a consignment consisting of (Count IV) a number of packages, each package containing a number of tablets of a drug, each package labeled in part, "Fero-B-Plex," (Count V) a number of packages, each package containing a number of tablets of a drug, each package labeled in part, "Minerals"; that the aforesaid drugs were received by Western Natural Foods Co. at Seattle, Washington; that on or about February 27, 1945, said defendant caused to be shipped by National Printing and Publishing Company from Chicago, Illinois, via the Universal Carloading & Distributing Co., Inc., to the Western Natural Foods Co. at Seattle, Washington, a number of printed bulletins entitled, "Health Today Spring 1945"; that on or about November 13, 1944 said defendant caused to be introduced and delivered for introduction into interstate commerce, via Railway Express Agency from Chicago, Illinois to Seattle, Washington, consigned to Western Natural Foods Co., a number of printed booklets entitled, "What You Can Do About Relieving the agonies of Arthritis"; that said bulletins and booklets were received at Seattle, Washington by said Western Natural Foods Co.;

that there appeared in said bulletins and booklets the written, printed and graphic matter quoted and referred to in Counts IV and V of Information.

It is further stipulated that said defendant caused to be introduced and delivered for introduction into interstate commerce on or about January 22, 1945, via Universal 753 Carloading & Distributing Co., Inc., from Chicago, Illinois to Seattle, Washington, consigned to Western Natural Foods Co., Seattle, Washington, a consignment consisting of (Count VI) a number of packages, each containing a number of tablets of a drug, each package labeled in part, "Bolax"; that the aforesaid drug was received by the Western Natural Foods Co. at Seattle, Washington; that there were shipped in the carton containing the drug, a number of printed booklets entitled, "Nutrition Guide"; that said booklets were received at Seattle, Washington by said consignee; that on or about February 27, 1945, said defendant caused to be shipped by the National Printing and Publishing Company from Chicago, Illinois, via the Universal Carloading & Distributing Co., Inc., to the said Western Natural Foods Co., at Seattle, Washington, a number of printed booklets entitled, "What You Can Do About Relieving The Agonies of Arthritis"; that said booklets were received at Seattle, Washington by said Western Natural Foods Co.; that there appeared in said booklets the written, printed and graphic matter quoted and referred to in Count VI of the Information;

It is further stipulated that said defendant caused to be introduced and delivered for introduction into interstate commerce, from on or about January 22, 1945, to on or about February 25, 1945, via the Universal Carloading & Distributing Co., Inc., from Chicago, Illinois, to Seattle, Washington, consigned to Western Natural Foods Co., Seattle, Washington, a consignment consisting of (Count X) a number of packages of a drug, each package labeled in part, "Lelord Kordel's Fenugreek Tea"; that the aforesaid drug was received by the Western Natural Foods Co. at Seattle, Washington; that on or about February 27, 1945, said defendant caused to be shipped by the National Printing and Publishing Company from Chicago, Illinois, via the Universal Carloading & Distributing Co., Inc., to the said Western Natural Foods Co. at Seattle, Wash-
754 ington, a number of printed bulletins entitled, "Health

Today Spring 1945": that defendant caused to be introduced and delivered for introduction into interstate commerce on or about November 13, 1944, via Railway Express Agency, from Chicago, Illinois, to Seattle, Washington, consigned to Western Natural Foods Co., Seattle, Washington, a number of printed booklets, entitled, "What You Can Do About Relieving The Agonies of Arthritis"; that on or about January 22, 1945 said defendant caused to be introduced and delivered for introduction into interstate commerce, via Universal Carloading & Distributing Co., Inc. from Chicago, Illinois, to Seattle, Washington, consigned to said Western Natural Foods Co., Seattle, Washington, a number of printed booklets entitled, "Nutrition Guide"; that within the period from on or about October 9, 1944 to on or about November 25, 1944 said defendant caused to be introduced and delivered for introduction into interstate commerce, from Chicago, Illinois, via Railway Express Agency, to the said Western Natural Foods Co. at Seattle, Washington, a number of printed booklets entitled, "Twenty Short Lessons in The Art of Relaxation," and a window display placard headed, "Stomach Agony"; that the aforesaid printed bulletins and booklets and window display placard were received at Seattle, Washington by said Western Natural Foods Co.; that there appeared in said bulletins, booklets and window display placard, the written, printed and graphic matter quoted and referred to in Count X of the Information;

It is hereby further stipulated that said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about October 16, 1944, via Railway Express Agency, from Chicago, Illinois to San Francisco, California, consigned to Rosenberg's Original Health Food Store, a consignment consisting of (Count XIII) a number of packages, each package containing a drug, 755 each package labeled in part, "Lelord Kordel's Sarsaparilla Tea"; that said defendant caused to be introduced and delivered for introduction into interstate commerce, on or about September 5, 1944, via Railway Express Agency, from Chicago, Illinois, to San Francisco, California, consigned to Rosenberg's Original Health Food Store, a number of printed booklets, entitled, "What You

Can Do About Relieving the Agonies of Arthritis"; that the aforesaid drug and booklets were received at San Francisco, California by Rosenberg's Original Health Food Store; that there appeared in said booklets the written, printed and graphic matter quoted and referred to in Count XIII of the Information.

That the compositions of the aforesaid drugs are as stated on their respective labels.

J. Albert Woll
United States Attorney
James W. Breen
Attorney for Defendants.

Dated at Chicago, Illinois,
this 20 day of March, A.D.

1946.

756 Filed August 21, 1946.)

757 And afterwards, to wit, on the 22nd day of March, 1946, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

758

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Friday, March 22, 1946

• • (Caption—No. 45 CR 488) • •

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney come also the defendants each in his own proper person and by his counsel and trial of this cause proceeds and the defendant Laura Kordel by her counsel enters herein her motion for a finding of not guilty and the Court having heard the arguments of counsel and being fully advised in the premises said motion is overruled and the Court now here after hearing all the evidence adduced by the parties and the arguments of counsel.

Memorandum

It Is Ordered that a rule be and is hereby entered on the defendants to file brief in Twelve Days from this date and that a rule be and is hereby entered on the Government to file brief within Ten Days thereafter and

It Is Further Ordered that this cause be taken under advisement.

759 And afterwards on, to wit, the 27th day of June, 1946 there was filed in the Clerk's office of said Court a certain Memorandum Of The Honorable Walter J. La Buy, District Judge in words and figures to wit:

760

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 46 CR 1) * *

MEMORANDUM

There are three informations, comprising twenty counts, brought against Laura Kordel and LeLord Kordel for violation of the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. 301 et seq.) by misbranding. A stipulation between LeLord Kordel trading as Gotu Kola Distributors and as LeLord Kordel Products, and as LeLord Kordel Products and Nutrition Enterprises, has been filed wherein the facts contained in the three informations are agreed. This stipulation is not made by Laura Kordel and is not to be construed as admissions by her.

With the stipulation of facts as stated in the informations, the only question tried by the court was whether the violation has been proved by the evidence.

The main contention of defendants' counsel is that since the booklets did not, in a number of counts, physically accompany the drugs they did not therefore "accompany" the drug within the meaning of Section 321(m) of the Act. Defendants' counsel urges a strict construction of the word "accompany" since this is a criminal action and that the penal provisions of the Federal Food, Drug and Cosmetic Act be strictly construed.

It is necessary first to determine the nature of the statute before us. The United States Supreme Court in *Hypo-*

lite Egg Co. v. U.S., (1911) 220 U.S. 45, and in *McDermott v. Wisconsin*, (1913) 228 U.S. 115, said:

"The purposes of this legislation thus touch phases of the lives and health of people which, in the circumstances of modern industrialism, are largely beyond self-protection. Regard for these purposes should infuse construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words."

and in *U.S. v. Antikamnia Co.*, (1914) 231 U.S. 654 and *U.S. v. Schider*, (1917) 246 U.S. 519:

761 "The purpose of the act is to secure the purity of food and drugs and to inform purchasers of what they are buying. Its provisions are directed to that purpose and must be construed to effect it."

It is apparent, therefore, that the purpose of the law is the ever-insistent consideration in its interpretation. Congress by enacting it intended to promote honesty and fair dealing in trade and secure to the public pure and wholesome food and drugs and there must be a reasonable construction to carry out the intention of Congress. This being "remedial legislation," the rule of liberal construction is to be followed irrespective of its penal provisions.

Mr. Justice Story in *Taylor et al v. U.S.*, (1845) 3 How. 197, stated this principle as follows:

"In one sense, every law imposing a penalty or forfeiture may be deemed a penal law; in another sense, such laws are often deemed, and truly deserve to be called remedial. The judge was, therefore, strictly accurate, when he stated that 'It must not be understood that every law which imposes a penalty is, therefore, legally speaking, a penal law, that is, a law which is to be construed with great strictness in favor of the defendant. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal acts, although they may inflict a penalty for violating them.' And he added, 'It is in this light I view the revenue laws, and I would construe them so as most effectually to accomplish the intention of the legislature in passing them.' The same distinction will be found recognized in the elementary writers, as, for example, in Blackstone's Commentaries . . . and Ba-

con's Abridgment . . . and Comyns' Digest . . . and it is also abundantly supported by the authorities."

The word "accompany" has been defined in a number of cases. See *U.S. v. Lee*, (C.C.A. 7, 1942) 126 F. (2d) 464; *U.S. v. Research Laboratories, Inc.* (C.C.A. 9, 1942) 126 F. (2d) 42, cert. den. 317 U.S. 656; *U.S. v. 7 Jugs etc. Dr. Salsbury's Rakos*, (D.C. Minn. 1944) 53 Fed. Supp. 746. An excellent analysis was made by District Judge Joyce in the *Rakos* case supra. He said:

"The word 'accompany' as used in Section 201(m) (2) was said in *United States v. Lee*, 7 Cir., 1942, 131 F. 2d 464, 466, 143 A.L.R. 1451, to mean: 'The word 'accompany' is not defined in the Act, but we observe that among the meanings attributed to the word are 'to go along with' 'to go with or attend as a companion or associate,' and 'to occur in association with,' Webster's New International Dictionary, 2d Ed. Naturally, the meanings of accompany will vary in connection with subject matter. 'Accompany' as used in this Act is used to describe a relationship between an article of drugs and its labeling. Since there can be no question that among the usual characteristics of labeling is that of informing a purchaser of the uses of an article to which the labeling relates,' (*United States v. Lee*, 131 F. 2d at page 466), the booklets here involved should be scrutinized from this viewpoint. . . .

762

"The stipulation clearly shows that the printed matter and the drugs had a common origin. They had a common destination in that both were intended to come together in the stores of dealers in Achilles' territory. They were interlocking units of a distributional scheme the objective of which was ultimate association and distribution together. There was actual, physical association together in the stores of dealers and actual distribution together in connection with purchases by farmers. It is fair to conclude that these booklets were prepared, shipped and distributed to dealers with the ultimate expectation and intention on the part of the Laboratories that they would serve the purpose of labeling for the three articles of merchandise here involved. Without the booklets, the products themselves lacked labeling, at least in so far as in-

forming purchasers of the purposes and uses of the remedies. The mere fact that the products were shipped at different times, over a different route and were received at a different time from the booklets should not be permitted to confuse or obscure the substance of the matter. * * *

"What is vital are such factors as interdependence of the drug and the booklets, common origin, common destination, display, distribution and use together. These determine whether there has been that degree of accompaniment which provides the necessary 'misbranded' status under Section 304(a). The mere fortuitous circumstance of an absence of physical association between the booklets and drugs during the interstate journey of the drugs does not in my opinion control."

It is contended by defendant that the above cited cases were brought under libels of information for the condemnation of the articles involved; that these were civil proceedings; that the present case involves the criminal aspects of the statute and the definition should therefore be differently construed. To adhere to defendant's construction would result in a strange situation wherein under the same statute and the same section, a single word would have a different meaning dependent only on the nature of the action brought. This interpretation would defeat the enforcement of the statute and the court cannot subscribe to such a proposition. Furthermore, the element of forfeiture in a statute is as much a penal provision as is the one imposing a penalty.

These booklets were shipped by the defendant. The drugs and booklets were sent to the same consignee. They were displayed and were intended to be distributed in relation to the drug. The booklets, pamphlets, or circulars were false and misleading.

From the evidence and proof in the trial of this case, the court finds the defendant Lelord Kordel guilty of violating the misbranding provisions of the Act. As to the defendant, Laura Kordel, the court is of the opinion the evidence is insufficient to support a conviction and she is therefore discharged.

Walter J. La Buy
Judge, U.S. District Court

Dated: June 27, 1946.

763 And on the same day to wit, on the 27th day of June, 1946 being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause No. 45 CR 488 before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

764

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • • (Caption—No. 45 CR 488) • • •

This day comes the United States by the United States Attorney, come also the defendants Laura Kordel, an individual trading as Gotu Kola Distributors, and Lelord Kordel each in his or her own proper person and by counsel, and disposition herein having been heretofore taken under advisement by the Court, after due consideration of the evidence adduced for the parties at the trial of this cause and the briefs of counsel and the Court being fully advised in the premises finds the defendant Laura Kordel, an individual trading as Gotu Kola Distributors, not guilty as charged in the Criminal Information filed herein against her and finds the defendant Lelord Kordel guilty as charged in said Criminal Information, therefore it is considered and

Ordered by the Court that said defendant Laura Kordel, an individual trading as Gotu Kola Distributors, go hence without day, discharged from further prosecution under said Criminal Information and defendant Lelord Kordel being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered by the Court and is the judgment of the Court upon said finding of guilty that said defendant Lelord Kordel forfeit and pay to the United States of America a fine in the sum of Two Hundred Dollars (\$200.00) together with the costs and charges in this behalf expended.

ENTER:

Walter J. LaBuy
District Judge

June 27, 1946

765 And on the same day, to wit, on the 27th day of June, 1946 being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause No. 45 CR 490 before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

766

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • • (Caption—No. 45 CR 490) • • •

This day comes the United States by the United States Attorney, comes also the defendant Lelord Kordel, individually and trading as Lelord Kordel Products, in his own proper person and by his counsel, and disposition herein having been heretofore taken under advisement by the Court, after due consideration of the evidence adduced for the parties at the trial of this cause and the briefs of counsel and the Court being fully advised in the premises finds said defendant guilty as charged in Counts 1, 2, 3, 4, 5 and 6, inclusive, of the Criminal Information filed herein against him and said defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered by the Court and is the judgment of the Court upon said finding of guilty that said defendant Lelord Kordel, an individual trading as Lelord Kordel Products, forfeit and pay to the United States of America a fine of Two Hundred Dollars (\$200.00) on each of said Counts 1, 2, 3, 4, 5 and 6, inclusive, of said Criminal Information, together with the costs and charges in this behalf expended.

ENTER:

Walter J. LaBuy
District Judge

Dated: June 27, 1946

767 And on the same day, to wit, on the 27th day of June, 1946 being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause No. 46 CR 1 before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

768

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 46 CR 1) • •

This day comes the United States by the United States Attorney, comes also the defendant Lelord Kordel, trading as Lelord Kordel Products and Nutrition Enterprises, in his own proper person and by his counsel, and disposition herein having been heretofore taken under advisement by the Court, after due consideration of the evidence adduced for the parties at the trial of this cause and the briefs of counsel and the Court being fully advised in the premises finds said defendant guilty as charged in Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, inclusive, of the Criminal Information filed herein against him and said defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered by the Court and is the judgment of the Court upon said finding of guilty that said defendant Lelord Kordel, trading as Lelord Kordel Products and Nutrition Enterprises, forfeit and pay to the United States of America a fine in the sum of Two Hundred Dollars (\$200.00) on each of said Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, inclusive, of said Criminal Information, together with the costs and charges in this behalf expended

ENTER:

Walter J. LaBuy
District Judge

Dated: June 27, 1946

769 And on the same day to wit, on the 27th day of June,
1946 being one of the days of the regular June term of
said Court, in the record of proceedings thereof, in said en-
titled cause, No. 45 CR 488 before the Honorable Walter J.
LaBuy District Judge, appears the following entry, to
wit:

770

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Thursday, June 27, 1946

• • • (Caption—No. 45 CR 488) • • •

This day comes the United States by the United States
Attorney comes also the defendant Lelord Kordel in his
own proper person and by his counsel and enters herein his
motion for a new trial which motion is entered and set for
hearing on July 16, A. D. 1946.

771 And on the same day to wit, on the 27th day of June,
1946 being one of the days of the regular June term of
said Court, in the record of proceedings thereof, in said en-
titled cause No. 45 CR 490 before the Honorable Walter J.
LaBuy District Judge, appears the following entry, to
wit:

772

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Thursday, June 27, 1946

• • • (Caption—No. 45 CR 490) • • •

This day comes the United States by the United States
Attorney comes also the defendant Lelord Kordel trading
as Lelord Kordel Products and Nutrition Enterprises
by his counsel and enters herein his motion for a new trial
which motion is entered and set for hearing on July 16,
A. D. 1946.

773 And, on the same day, to wit, on the 27th day of June, 1946, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, No. 46 CR 1, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

774

IN THE DISTRICT COURT OF THE UNITED STATES
for the Northern District of Illinois
Eastern Division

Thursday, June 27, 1946.

• • (Caption—No. 46 CR 1) • •

This day comes the United States by the United States Attorney comes also the defendant LeLord Kordel trading as LeLord Kordel Products and Nutrition Enterprises, in his own proper person and by his counsel and enters herein his motion for a new trial which motion is entered and set for hearing on July 16, A. D. 1946.

775 And afterwards on, to wit, the 16th day of July, 1946, came the Defendant by his attorneys and filed in the Clerk's Office of said Court his certain Motion For New Trial, in causes Nos. 45 CR 488; 45 CR 490 and 46 CR 1 in words and figures following, to wit:

776

IN THE DISTRICT COURT OF THE UNITED STATES
for the Northern District of Illinois
Eastern Division

• • (Caption—No. 46 CR 1) • •

MOTION FOR NEW TRIAL

And now comes the defendant, LeLord Kordel, individually and trading as LeLord Kordel Products and LeLord Products and Nutrition Enterprises, and moves the court to grant him a new trial in the above entitled causes, and in support of said motion presents the following grounds:

1. The finding of the Court is contrary to the law.
2. The finding of the Court is contrary to the evidence.
3. The finding of the Court is contrary to the law and to the evidence.

778 And on the same day, to wit, on the 16th day of July, 1946, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause No. 45 CR 488, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

779

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois

Eastern Division

Tuesday, July 16, 1946.

• • (Caption—No. 45 CR 488) • •

This cause coming on to be heard on the motion of the defendant for a new trial comes the United States by the United States Attorney comes also the defendant Lelord Kordel in his own proper person and by his counsel and the Court having heard the arguments of counsel and being fully advised in the premises

It is ordered that the motion for a new trial be and the same is hereby overruled and a new trial denied and on motion of the defendant,

It is ordered that execution of the judgment entered herein be and the same is hereby stayed to and including September 15, A. D. 1946.

780 And on the same day, to wit, on the 16th day of July, 1946, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said cause No. 45 CR 490, before the Honorable Walter LaBuy, District Judge, appears the following entry, to wit:

781

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Tuesday, July 16, 1946.

• • (Caption—No. CR 490) • •

This cause coming on to be heard on the motion of the

defendant for a new trial comes the United States by the United States Attorney comes also the defendant Lelord Kordel in his own proper person and by his counsel and the Court having heard the arguments of counsel and being fully advised in the premises

It is ordered that the motion for a new trial be and the same is hereby overruled and a new trial denied and on motion of the defendant

It is ordered that execution of the judgment entered herein be and the same is hereby stayed to and including September 15, A. D. 1946.

782 And on the same day, to wit, on the 16th day of July, 1946, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause No. 46 CR 1, before the Honorable Walter La Buy, District Judge, appears the following, to wit:

783

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Tuesday, July 16, 1946.

• • (Caption—No. 46 CR 1) • •

. This cause coming on to be heard on the motion of the defendant for a new trial comes the United States by the United States Attorney comes also the defendant Lelord Kordel in his own proper person and by his counsel and the Court having heard the arguments of counsel and being fully advised in the premises

It is ordered that the motion for a new trial be and the same is hereby overruled and a new trial denied and on motion of the defendant

It is ordered that execution of the judgment entered herein be and the same is hereby stayed to and including September 15, A. D. 1946.

784 And afterwards on, to wit, the 19th day of July,
1946, came the Defendant by his attorneys and filed in
the Clerk's office of said Court his certain Notice in words
and figures following, to wit:

785

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
NOTICE

To: A. J. Woll,
United States District Attorney,

• • (Caption—No. 46 CR 1) • •

U. S. Courthouse,
Chicago, Illinois.

You are hereby notified that on July 19th, 1946, I will
file in the Office of the Clerk of the United States District
Court a Notice of Appeal in the above entitled cause.

James W. Breen,

Attorney for Appellant.

Received a copy of the above notice together with at-
tached Notice of Appeal this 19th day of July, 1946.

J. Albert Woll.

786 And of the same day, to wit, the 19th day of July,
1946, came the Defendant by his attorneys and filed
in the Clerk's office of said Court his certain Notice of
Appeal in words and figures following, to wit:

787

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 46 CR 1) • •

NOTICE OF APPEAL

Name and Address of Appellant:

Lelord Kordel,
188 W. Randolph St.,
Chicago, Illinois.

*Notice of Appeal***Name and Address of Attorney:**

James W. Breen,
155 N. Clark St.,
Chicago, Illinois.

Offense:

Violation of the provisions of the Federal Food,
Drug and Cosmetic Act by misbranding.

Date of Judgment:

June 27, 1946.

Brief Description of Judgment or Sentence:

Defendant fined \$200.00 and costs on each count.

788 I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit, from the judgment above mentioned, on the grounds set forth below:

1. The finding of the Court is contrary to the law.
2. The finding of the Court is contrary to the evidence.
3. The finding of the Court is contrary to the law and to the evidence.
4. The finding of the Court is not supported by the evidence.
5. The evidence fails to prove that the defendant is guilty of mislabeling the products offered for sale.
6. The Court erred in its rulings of law and fact.
7. The Court erred in holding that the facts set forth in the informations and stipulations of facts constituted a crime under the laws of the United States.
8. The Court erred in admitting irrelevant, incompetent, prejudicial and immaterial testimony offered by and on behalf of the government.
9. The Court erred in refusing competent, relevant and material testimony offered by and on behalf of the appellant over the exceptions of this appellant at the time.

789 10. The Court erred in denying defendant's motion for a new trial.

11. The record is barren of any competent, material or relevant evidence sufficient as a matter of law to establish the guilt of the appellant beyond the reasonable doubt.

Lelord Kordel,

Appellant.

Dated: July 19th, 1946

James W. Breen,

Attorney for Appellant.

790 And afterwards on, to wit, the 1st day of August, 1946, came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Notice in words and figures following, to wit:

791

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • • (Caption—No. 46 CR 1) • • •

NOTICE

To: J. Albert Woll,
U. S. District Attorney,
450 U. S. Court House,
Chicago, Illinois.

You are hereby notified that on Thursday, August 1, 1946, I will file in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, a Praeipe for Record in the above entitled causes, a copy of which is herewith served upon you.

Albert W. Breen,
Attorney for Lelord Kordel, defendant,
716, 155 N. Clark Street.

Received a copy of the foregoing Notice, together with a copy of the Praeipe for Record therein mentioned, this 1st day of August, A. D. 1946.

J. Albert Woll,
U. S. District Attorney.

792 And on the same day, to wit, the 1st day of August, 1946, came the Appellant by his attorneys and filed in the Clerk's office of said Court his certain Praeipie for Record in words and figures following, to wit:

793

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 46 CR 1) • •

PRAEIPIE FOR RECORD

Now comes the defendant, Lelord Kordel, by James W. Breen, his attorney, and designates the following portion of the record in the above entitled causes to be contained in the record on appeal:

1. The three Informations.
2. The plea of not guilty by the defendant.
3. The Stipulation of Facts entered into between the Government and the defendant.
4. The transcript of the evidence heard upon the trial of said causes.
- 794 5. Defendant's motion for a new trial.
6. Memorandum of the written opinion by the Honorable Walter J. LaBuy, dated June 26, 1946.
7. Judgment of the Court.
8. Motion for stay of execution.
9. Notice of Appeal.
10. Praeipie for Record.
11. Statement of points.
12. Any and all orders or pleadings filed of record in the above entitled cause.
13. All exhibits introduced by the Government.

James W. Breen,
Attorney for defendant, Lelord Kordel.

Received a copy of the above and foregoing Praeipie for Record this 1st day of August, A. D. 1946.

J. Albert Woll,
United States District Attorney.

795 And afterwards, to wit, on the 23rd day of August, 1946, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

796

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 46 CR 1) • •

ORDER

This cause coming on to be heard upon the motion of the attorney for the defendant, for the entry of an order directing that the original exhibits introduced in evidence at the trial of the above entitled causes be incorporated in the record filed in the United States Circuit Court of Appeals for the Seventh Circuit; and the Court having heard the arguments of counsel and being fully advised in the premises.

It is hereby ordered, adjudged and decreed by the Court that the Clerk of the United States District Court incorporate all original exhibits introduced at the trial of the above entitled causes in the record which the said Clerk is preparing to have filed in the United States Circuit Court of Appeals for the Seventh Circuit.

Enter: Igoe,
Judge.

797

Northern District of Illinois } ss.
Eastern Division }

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Praeceptum For Record filed in this Court in the causes entitled: United States of America v. Laura Korel, and individual, trading as Gotu Kola Distributors, and Lelord Kordel, No. 45 CR 488; United States of America v. Lelord Kordel, individually and trad-

Clerk's Certificate

ing as Lelord Kordel Products, No. 45 CR 490; and United States of America v. Lelord Kordel, trading as Lelord Kordel Products and Nutrition Enterprises, No. 46 CR 1, as the same appear from the original records and files thereof now remaining in my custody and control, except the original exhibits which are incorporated herein by direction of this court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of August, A. D. 1946.

Roy H. Johnson,
Clerk.

By Gizella Butcher,
Deputy Clerk.

Dated: June 27th, 1946

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of the record filed with this Court on the thirteenth day of March, 1947, in:

Cause No. 9151.

The United States of America,
Plaintiff-Appellee,
vs.

Lelord Kordel,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 13th day of February, A. D. 1948.

(Seal) **Kenneth J. Carrick,**
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the second day of October, in the year of our Lord One thousand nine hundred and forty-five, and of our Independence the one hundred and seventieth.

9151	The United States of America, <i>Plaintiff-Appellee,</i>	} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
	<i>vs.</i>	
	Lelord Kordel, <i>Defendant-Appellant.</i>	

And afterwards, to-wit, on the twenty-seventh day of July, 1946, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellant, which said appearance is in the words and figures following, to-wit:—

UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

Cause No. 9151.

The United States of America,
Plaintiff-Appellee,
vs.
Lelord Kordel, etc.,
Defendant-Appellant.

The Clerk will enter my appearance as counsel for Appellant.

James W. Breen,
155 N. Clark St.

Endorsed: Filed July 27, 1946. Kenneth J. Carrick,
Clerk.

Hearing and Advisement?

And afterwards, to-wit, on the sixth day of October, 1947, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

Monday, October 6, 1947.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. William M. Sparks, Circuit Judge.

Hon. Walter C. Lindley, District Judge.

The United States of America,
Plaintiff-Appellee,

9151

*vs.*Lelord Kordel,
Defendant-Appellant.} Appeal from the Dis-
trict Court of the
United States for
the Northern Dis-
trict of Illinois,
Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. James W. Breen, counsel for the Appellant, and by Mr. Robert C. Eardley and Mr. William W. Goodrich, counsel for the Appellee, and the Court takes this matter under advisement.

And afterwards, to-wit, on the sixth day of November, 1947, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 9151.

October Term and Session, 1947.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

LELORD KORDEL,
Defendant-Appellant.

} Appeal from the Dis-
trict Court of the
United States for
the Northern Dis-
trict of Illinois,
Eastern Division.

November 6, 1947.

Before EVANS and SPARKS, Circuit Judges, and LINDLEY,
District Judge.

SPARKS, Circuit Judge. Appellant was charged by three criminal informations with violation of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. sections 301, *et seq.* He waived jury trial and, upon trial by the court, was found guilty and fined \$200 on each of the twenty counts contained in the three informations. The appeal is from those judgments.

The facts as to the shipping of the drugs and the literature alleged to constitute the misbranding charged in the informations were entirely stipulated. Error is asserted in the court's finding that that literature "accompanied" the drugs in interstate commerce in the purview of the Act prohibiting the introduction or delivery for introduction of any drug that is misbranded. Other contested issues relate to the degree of proof necessary in a criminal proceeding under the Act, whether the Act should be strictly construed, and whether prosecution should have been by indictment rather than by information.

Appellant is a self-styled authority on nutrition and vitamins. He testified that he had written many papers on the subject of vitamins, herbs, minerals and nutritional diet subjects in general, securing the material for preparation of his papers from books. Operating under various trade names, he had been producing and marketing his own products since January 1941, largely through "health food" stores. The products appear to be, for the most part, compounded of various vitamins, minerals, and herbs. No charge of falsehood is made as to the principal labels printed on the packages in which each is contained. These labels give the name of the article and distributor, content, recommended dosage, and, in some cases, the alleged daily minimum requirement of the vitamins or minerals therein. Otherwise they give no indication as to their intended uses.¹ The misbranding charged is contained in a number of printed pamphlets and circulars, and one display placard. The modes of distribution of this literature differed as charged in the various counts of the informations. In some cases it was contained in the carton in which the articles were shipped. More often, it was separately shipped to the same consignees, and, in at least one case, a period of a year and a half intervened between the shipment of the product and the literature, respectively.

Section 301 of the Food and Drugs Act as amended in 1938, 21 U. S. C. A. sec. 331, prohibits the introduction or delivery for introduction into interstate commerce of any drug that is misbranded; section 502, 21 U. S. C. A. sec. 352, provides that a drug shall be deemed to be misbranded if its labeling is false or misleading in any particular; and section 201(m), 21 U. S. C. A. sec. 321(m), defines the term "labeling" to include all labels and other written, printed, or graphic matter "(1) upon any article or any of its containers or wrappers, or (2) accompanying such article."

It is now generally held that in order to support a misbranding charge under the Act as amended and revised in 1938, it is not necessary that the matter alleged to accompany the product be shipped in the same container (*United States v. Research Laboratories*, 126 F. 2d 42), nor even that it be shipped simultaneously (*United States v. Lee*,

1. The articles involved in the three informations are named "Gotu Kola," "Minerals plus Chlorophyll and Vitamin D," "Cetabs," "Fenugreek Tea," "Fero-B-Plex," "Bolax," "Ormotabs," "Ribotabs," "Kordel Tablets," "Everm," "Kordel A," "Garlic Plus," "Niamin," and "Sarsaparilla Tea."

131 F. 2d 464; *United States v. 7 Jugs* • • *Rakos*, 53 Fed. Supp. 746; *United States v. Paddock*, 67 Fed. Supp. 819).

Appellant contends that the cases referred to are not applicable for the reason that all involved civil proceedings rather than criminal, and further, that the literature here involved was not only not shipped in the same carton with the products in all cases, but neither was it intended by him that product and literature should be placed together by the dealer to whom they were sent. His theory apparently is that the matter was not intended for labeling, but for advertising. He points to the fact that all of the printed matter was intended either to be mailed out or to be sold, as indicated by the fact that, with the exception of the one display placard, each piece either contained a price mark or a mailing permit with space for address. This, he contends, supports his theory that product and literature were not to be distributed together, hence cannot be said to accompany each other.

We find two answers to this contention. In the first place, labeling and advertising are not mutually exclusive, and the same matter may serve both purposes. As the Court of Appeals for the Ninth Circuit states in *United States v. Research Laboratories*, 126 F. 2d 42, "Most, if not all, labeling is advertising. The term 'labeling' is defined in the Act as including all printed matter accompanying any article. Congress did not, and we cannot, exclude from the definition printed matter which constitutes advertising." See also *United States v. Paddock*, 67 Fed. Supp. 819. In the second place, the placing of the mailing permit or the price tag on the literature cannot insulate appellant from liability for introducing the drugs and their related descriptive matter into interstate commerce together by consignment to the same consignee for distribution by him. The evidence is clear that the booklets were actually displayed on racks close to the counter where the products were sold and that they were necessary to inform the purchasing public of the uses to which these products were to be put.

We agree with appellee that "the correct concept of 'accompaniment' is one of a commercial or business association." As stated in the *Rakos* case, *supra*, "misbranding has true significance only in terms of the consumer." • • "Accompany" as used in this Act is used to describe a

relationship between an article of drug and its labeling. Since there 'can be no question that among the usual characteristics of labeling is that of informing a purchaser of the uses of an article to which the labeling relates' (citing the decision of this court in *United States v. Lee, supra*) the booklets here involved should be scrutinized from this viewpoint. In the sense just stated, if the booklets are not labeling, then the products "have none."

We, too, are convinced that the test is not of physical contiguity but of textual relationship. Viewed thus, the products and literature here involved were interdependent because without the latter, the former lacked the labeling necessary to inform the purchasing public of their uses and purposes—it is significant that the labels printed on the immediate containers did not indicate the purposes for which the articles were to be used. Hence, the literature was intended and essential to explain the alleged uses of the products. They constituted a supplement to the label physically attached to the product container. One of the health food dealers in whose store the Kordel products were sold admitted that if he were buying one of the products he would have to go to "reliable sources" to know to what use to put the product. Presumably those reliable sources were the booklets displayed in racks close by the counter where the drugs were dispensed or lying on the counters where they were available to the public and could be picked up and examined. Some also were wrapped with merchandise or handed to customers.

We agree with the District Court that, because the literature was shipped by appellant or at his order, to the same consignees as the products, related to those products, and was intended to be distributed in relation to them, it did accompany the products into interstate commerce within the definition of the Act. To hold otherwise would be to permit evasion of the Act by the very easy subterfuge of printing a purchase price or a mailing permit on advertising matter otherwise unquestionably accompanying products into interstate commerce.

With respect to the misrepresentations contained in the accompanying literature we think there can be no serious question. The two booklets, "Nutrition Guide," and "What you can do about relieving the agonies of Arthritis," were written by appellant who, in the latter, is described as

"America's leading vitamin and diet expert." "Health Today, Spring 1945," is edited by the same "famous nutrition and vitamin authority." While all purport to be scientific publications of general interest apart from the articles produced and marketed by appellant, written by an expert in the field, in fact, all are replete with references to the Kordel products and their uses to prevent, ameliorate or cure a vast and diverse variety of ailments, and each conveniently closes with a price list of the various Kordel products recommended for use therein. All are concerned primarily with promoting the sale of the various products by explaining the need for each, along with extravagant claims as to the usefulness of each. A study of the three pamphlets reveals that the products therein described are recommended for relieving stomach agonies, general weakness, anemia, premature old age, high blood pressure, liver troubles, failing eyesight, sore feet; maintaining blood energy, muscular activity, sound teeth and gums, healthy skin, hair and eyes, normal functioning of the pituitary and thyroid glands, stomach, intestines, colon, liver and kidneys; and preventing arthritis, and stiff joints, excess weight, catarrh, nervous breakdown, sterility, and paralysis.

Thus the scheme devised by appellant for the distribution of his products and related literature contemplates an elaborate system of self-diagnosis and medication. The danger inherent in this system lies not in any positive unwholesomeness of the articles themselves. As to them as such there is no charge and it may be that they are quite harmless in and of themselves. The danger however, lies in the fact that ignorant and gullible persons are likely to rely upon them instead of seeking professional advice for conditions they are represented to relieve or prevent. The Government introduced the evidence of many very eminent men in the medical profession to prove the dangerously misleading character of the literature in that the drugs were useless to combat the conditions they were represented to relieve, while delay in correct diagnosis and treatment for those conditions might render the treatment useless. As one of them stated, the literature encouraged people to experiment with themselves and that meant they were gambling with their health and life. He branded as scientifically ridiculous and nonsensical various of the claims

and, when asked whether he would say that the products in themselves were harmful, replied, "They are definitely harmful in that they encourage a patient with a serious disease to experiment with himself when he should seek medical advice and precise diagnosis and therapy."

All were agreed that while the claims were absurd and fantastic, they were dangerous in that they tended to lull people into a false sense of security in reliance on the drugs when they might need professional diagnosis and treatment for conditions which might respond to treatment if correctly diagnosed early enough, but which might become much more serious if not taken care of early. Since the literature which we have already held accompanied the products embodies such misleading representations, it constitutes misbranding within the meaning of the Act.

Appellant contends that, since the current proceedings are criminal, he is entitled to a strict construction of the Act, with proof of the violation, if any, beyond a reasonable doubt. Courts for a long time have been committed to the doctrine of giving statutes intended to protect the public health a very liberal construction. As stated in *Sutherland on Statutory Construction* (Vol. III, sec. 7202), "The public and social purposes served by such legislation greatly exceed the inconvenience and hardship imposed upon the individual, and therefore the former is given greater emphasis in the problems of interpretation. Therefore the courts are inclined to give health statutes a liberal interpretation despite the fact that such statutes are primarily penal in nature and frequently impose criminal penalties." To the same effect is the ruling in *United States v. Dotterweich*, 321 U. S. 277, where the Court said, "The prosecution to which Dotterweich was subjected is based on a now familiar type of legislation whereby penalties serve as effective means of regulation. Such legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing."

We think there can be no doubt of the sufficiency of the evidence to sustain the charge beyond a reasonable doubt.

Appellant strongly relies upon *Alberty v. United States*, 159 F. 2d 278, to sustain his proposition that booklets and the like, not shipped at the time of the articles, do not "accompany" the article when they are introduced or offered for introduction into interstate commerce, and con-

sequently cannot "then and there" misbrand them. The Circuit Court of Appeals for the Ninth Circuit there reversed an order overruling a demurrer to an information and remanded the cause with directions to dismiss the information. It distinguished three of the cases to which we have referred (*United States v. Research Laboratories, United States v. 7 Jugs • Rakos*, and *United States v. Lee*), on the ground that all involved civil proceedings and construed the Act liberally. We have already indicated that under the authorities cited, we do not consider the distinction applicable to the construction of the statute here involved. To the extent that the court limits the definition of the word "accompany" to mean only physical association and contiguity, we do not agree with its reasoning and are convinced that it is not in harmony with those authorities.

We find no merit in appellant's contention that he should have been prosecuted by indictment rather than by information. Section 303(a) upon which the informations were based (21 U. S. C. A. sec. 333(a)) provides that any person violating any of the provisions of section 201 shall be guilty of a misdemeanor, and subject to imprisonment for not more than one year or a fine of \$1,000 or both, unless he has already been convicted of a prior offense under the same section. The charges were brought under this section. That being the case, there was no necessity for prosecution by indictment. See *United States v. Wells Co.*, 186 Fed. 248 (holding violation of the 1906 Food and Drugs Act not an infamous crime). See also *Falconi v. United States*, 280 Fed. 766, and cases there cited.

Judgments affirmed.

And on the same day, to-wit, on the sixth day of November, 1947, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

* Thursday, November 6, 1947.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

9151	United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Lelord Kordel, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
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This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgments of the said District Court in this cause appealed from be, and the same are hereby, Affirmed.

And afterwards, to-wit, on the thirteenth day of November, 1947, there was filed in the office of the Clerk of this Court a motion and affidavit to extend time for filing petition for rehearing, which said motion and affidavit are in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 9151.

The United States of America,
Plaintiff-Appellee,

vs.

Lelord Kordel,
Defendant-Appellant.

United States of America,
vs.

Lelord Kordel.

} No. 45 CR 488.

United States of America,
vs.

Lelord Kordel, individually and
trading as Lelord Kordel Prod-
ucts.

} No. 45 CR 490.

United States of America,
vs.

Lelord Kordel, trading as Lelord
Products and Nutrition Enter-
prises.

} No. 46 CR 1.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
Hon. Walter J. LaBuy, Trial Judge.

NOTICE.

To: Otto Kerner, Jr.,
United States District Attorney,
U. S. Court House,
Chicago, Illinois.

You Are Hereby Notified that I have this day filed in the
office of the Clerk of the United States Circuit Court of
Appeals for the Seventh Circuit, a motion for leave to ex-

tend the time of filing the Petition for Rehearing in the above entitled cause for fifteen (15) days from November 16, 1947, and in support thereof have filed the affidavit of the undersigned as attorney for Defendant-Appellant; copies of which Motion and affidavit are herewith served upon you.

Dated at Chicago, Illinois, this 13th day of November, A. D. 1947.

James W. Breen,
Attorney for Defendant-Appellant.
716, 155 N. Clark St.,
Cent. 0390.

State of Illinois, }
County of Cook. } ss.

James W. Breen, being first duly sworn, on oath deposes and says that he served the foregoing Notice on the said Otto Kerner, Jr., by mailing a true and correct copy thereof, together with a true and correct copy of the Motion and Affidavit therein mentioned, to him, at the address set opposite his name, through the United States Mail, on the 13th day of November, A. D. 1947.

James W. Breen

Subscribed and sworn to before me this 13th day of November, A. D. 1947.

(Seal)

Ethel W. Wang,
Notary Public.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 9151.

The United States of America,
Plaintiff-Appellee,

vs.

Lelord Kordel,
Defendant-Appellant.

} Appeal from the
United States Dis-
trict Court, North-
ern District of
Illinois, Eastern Di-
vision.

} —
Honorable
Walter J. LaBuy,
Trial Judge.

MOTION.

Now comes defendant-appellant, Lelord Kordel, by James W. Breen, his attorney, and moves the Court for leave to extend the time of filing the Petition for Rehearing in the above entitled cause for fifteen (15) days from November 16, 1947, and in support of said motion submits the attached affidavit.

James W. Breen,
Attorney for Defendant-Appellant.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 9151.

The United States of America,
Plaintiff-Appellee,

vs.

Lelord Kordel,
Defendant-Appellant.

Appeal from the
United States Dis-
trict Court, North-
ern District of
Illinois, Eastern Di-
vision.

Honorable
Walter J. LaBuy,
Trial Judge.

AFFIDAVIT.

State of Illinois, }
County of Cook. } ss.

James W. Breen, being first duly sworn, on oath deposes and says that he is attorney of record for Lelord Kordel, defendant-appellant in the above entitled cause; that the printed Brief filed in this cause was prepared by Attorney Arthur D. Herrick, of 39 Broadway, New York City, New York; that affiant, immediately upon receipt of the Opinion handed down in the above entitled cause by this Honorable Court on November 6, 1947, forwarded the same to the said Arthur D. Herrick.

Affiant further deposes and says that according to a communication received this date from the said Arthur D. Herrick, it is apparent that he was not at his office and did not receive affiant's communication until November 11, 1947, and that it will be impossible for him, under the circumstances, to prepare the said Petition in time to have it printed and filed with ten (10) days from the date of the opinion, and therefore it becomes necessary to ask for an extension of time.

James W. Breen.

Subscribed and sworn to before me this 13th day of November, A. D. 1947.

(Seal)

Ethel W. Wang,
Notary Public.

Endorsed: Filed Nov. 13, 1947. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit, on the fourteenth day of November, 1947, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

Friday, November 14, 1947.

Before:

Hon. William M. Sparks, Circuit Judge.

9151	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Lelord Kordel, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
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On motion of counsel for the defendant-appellant, it is ordered that the time for filing a petition for rehearing herein be, and the same is hereby, extended for fifteen (15) days from November 16, 1947.

And afterwards, to-wit, on the first day of December, 1947, there was filed in the office of the Clerk of this Court the Appellant's Petition for Rehearing, which said petition is not set forth here.

And afterwards, to-wit, on the twelfth day of December, 1947, there was filed in the office of the Clerk of this Court an answer to appellant's petition for a rehearing, which said answer is not set forth here.

Order Denying Petition for Rehearing.

And afterwards, to-wit, on the twenty-second day of January, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

Thursday, January 22, 1948.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. William M. Sparks, Circuit Judge.

Hon. Walter C. Lindley, District Judge.

The United States of America,
Plaintiff-Appellee,

9151

vs.

Lelord Kordel,
Defendant-Appellant.

} Appeal from the Dis-
trict Court of the
United States for
the Northern Dis-
trict, of Illinois,
Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby denied.

And afterwards, to-wit, on the twenty-seventh day of January, 1948, the mandate of this Court was issued to the United States District Court for the Northern District of Illinois, Eastern Division.

And afterwards, to-wit, on the twenty-ninth day of January, 1948, there was filed in the office of the Clerk of this Court a motion and affidavit to recall and stay the mandate in this cause pending the filing of a petition for certiorari in the Supreme Court of the United States, which said motion and affidavit are in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 9151.

United States of America,
Plaintiff-Appellee,

vs.

Lelord Kordel,
Defendant-Appellant.

Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, East-
ern Division.

Hon.
Walter J. LaBuy,
Trial Judge.

NOTICE.

To: Otto Kerner, Jr., U. S. District Attorney, 450 U. S. Court House, Chicago, Illinois.

You Are Hereby Notified that on Thursday, January 29, A. D. 1948, I shall file in the office of the Clerk of the United States Circuit Court of Appeals a motion to recall the mandate issued in the above entitled cause on January 27, 1948, and to stay said mandate pending the filing of a Petition for Certiorari in the United States Supreme Court, and in support of said Motion shall present the Affidavit of the undersigned, copies of which Motion and Affidavit are herewith served upon you.

Dated at Chicago, Illinois, this 28th day of January, A. D. 1948.

James W. Breen,
Attorney for Defendant-Appellant.

State of Illinois, }
County of Cook. } ss.

James W. Breen, being first duly sworn, on oath deposes and says that he served the foregoing Notice on the said Otto Kerner, Jr., by mailing a true and correct copy thereof, together with a true and correct copy of the Motion and Affidavit therein mentioned, to him, at the address given above, through the United States Mail, on the 28th day of January, A. D. 1948.

James W. Breen.

Subscribed and sworn to before me this 28th day of January, A. D. 1948.

Ethel W. Wang,
Notary Public.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 9151.

United States of America,
Plaintiff-Appellee,

vs.

Lelord Kordel,
Defendant-Appellant.

} Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, East-
ern Division.

Hon.
Walter J. LaBuy,
Trial Judge.

MOTION.

And now comes the defendant, Lelord Kordel, by his attorney, James W. Breen, and moves the Court to recall the mandate issued on January 27, 1948, and to stay said mandate pending the filing of a Petition for Certiorari in the United States Supreme Court, and in support of said motion submits the attached affidavit.

James W. Breen,
Attorney for Defendant-Appellant.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 9151.

United States of America,
Plaintiff-Appellee,

vs.

Lelord Kordel,
Defendant-Appellant.

Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, East-
ern Division.

Hon.
Walter J. LaBuy,
Trial Judge.

AFFIDAVIT.

State of Illinois, }
County of Cook. } ss.

James W. Breen, being first duly sworn, on oath deposes and says that he is attorney of record for the defendant in the above entitled cause, and that on account of his engagements in the Circuit and Superior Courts of Cook County, he overlooked filing a motion to stay the mandate.

Affiant further deposes and says that the defendant is desirous of having his case passed upon by the Supreme Court of the United States, and that he will file a Petition for Writ of Certiorari in the Supreme Court of the United States requesting said Court to grant an appeal in the above entitled cause, and that said Petition will be filed in accordance with the statutes of the United States and the rules of the Supreme Court of the United States.

Affiant therefore prays that the motion of the defendant to recall said mandate and stay the same pending the filing of the Petition for Writ of Certiorari in the Supreme Court of the United States, be granted.

James W. Breen.

Subscribed and sworn to before me this 28th day of
January, A. D. 1948.

Ethel W. Wang,
Notary Public.

(Seal)

Endorsed: Filed Jan. 29, 1947. Kenneth J. Carrick,
Clerk.

Order Recalling and Staying Mandate.

And afterwards, to-wit, on the thirtieth day of January, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

January 30, 1948.

Before:

Hon. J. Earl Major, Circuit Judge.

United States of America,
Plaintiff-Appellee,

9151

vs.

Lelord Kordel,
Defendant-Appellant.

} Appeal from the Dis-
trict Court of the
United States for
the Northern Dis-
trict of Illinois,
Eastern Division.

On motion of counsel for the defendant-appellant, it is ordered that the mandate of this Court, heretofore issued in this cause on January 27, 1948, be, and the same is hereby, recalled and stayed for a period of thirty (30) days pursuant to the provisions of Rule 25 of the Rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of proceedings had and papers filed in this Court (excepting the briefs of counsel, motions and stipulations filed and orders entered in re extending the time for filing of the record and briefs of counsel) in:

Cause No. 9151.

The United States of America,
Plaintiff-Appellee,
vs.

Lelord Kordel,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 13th day of February, A. D. 1948.

(Seal) Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

[fol. 480] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1947

No. —

LELORD KORDEL, Petitioner,

v.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writs of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 15th, 1948.

Frank Murphy, Associate Justice of the Supreme Court of the United States.

Dated this 16th day of February, 1948.

[fol. 481] SUPREME COURT OF THE UNITED STATES

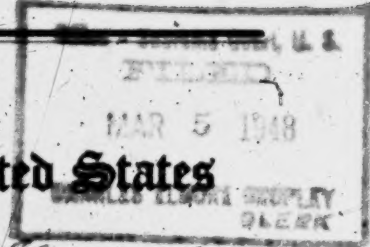
ORDER ALLOWING CERTIORARI—Filed April 19, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 577, United States of America vs. Urbeteit.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7276)

LIBRARY
SUPREME COURT, U. S.



Supreme Court of the United States

OCTOBER TERM, 1947.

No. ~~643~~ 30

LELORD KORDEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT
THEREOF.**

LELORD KORDEL,

Petitioner,

ARTHUR D. HERRICK,
Attorney for Petitioner,

39 Broadway,

New York 6, N. Y.

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Supreme Court of the United States

OCTOBER TERM, 1947

No.

LELORD KORDEL,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

*To the Honorable the Chief Justice of the United States and
the Associate Justices of the Supreme Court of the
United States:*

Your petitioner, LELORD KORDEL, in support of his petition for a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered November 6, 1947, affirming his convictions under section 301 of the Federal Food, Drug, and Cosmetic Act [U. S. C., Title 21, §331], on June 27, 1946, respectfully shows:

A

SUMMARY STATEMENT OF THE MATTER INVOLVED

This proceeding was initiated by the filing of three criminal informations, comprising twenty counts, by the United States in the Eastern Division of the District Court of the United States for the Northern District of Illinois as causes Nos. 45 CR 488, 45 CR 490, and 46 CR 1. The informations charged generally that specified foods and drugs when introduced and delivered for introduction into interstate commerce were accompanied by certain circulars, which were alleged to be false or misleading, and such foods and drugs were, by reason thereof, *then and there* misbranded. Similarly, the only charge made against petitioner in said informations was the violation of section 301(a) of the Federal Food, Drug, and Cosmetic Act [U. S. C., Title 21, §331(a)] which reads as follows: "The following acts and the causing thereof are hereby prohibited: (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded. * * *"

It is also material to note that petitioner was prosecuted by information and not by indictment.

THE SEPARATE SHIPMENTS OF FOOD OR DRUG AND
ALLEGEDLY MISBRANDED CIRCULAR

In the counts of the informations mentioned in the footnote¹ the booklets, pamphlets, and circulars in no instance accompanied the product charged with being misbranded at the time it was introduced into interstate commerce. In

¹ Information 45 CR 488, Information 45 CR 490, Counts 5 and 6, and Information 46 CR 1, all counts.

addition, the products and printed matter were shipped from two different cities in Illinois. The time separating the shipment of the "misbranded" articles and the printed matter allegedly causing their misbranding ranged as follows: 2, 36, 41, 58, 71, 105, 188, and 561 days. For example, in one case (Information 45 CR 490, Count 6) the article was shipped on July 10, 1942, and the printed matter over 18 months later on January 18, 1944. No evidence was introduced by the Government that such printing matter ever accompanied the product in a physical sense, or that any consumer received the printed matter or relied, either in making the purchase or in using the product, upon the printed matter.

CIRCULARS AND MAGAZINES INTENDED FOR MAILING
BY DEALER

Government Exhibits 8 and 24² bore post-office mailing permit indicia, together with space for addressing. The former was shipped 36 days *after* the articles with which they are now connected; the latter six months *before* the products. The sole purpose of their shipment to the dealers was for mailing to the dealers' lists (R. 145, 146, 161, 167, 335). Most, if not all, were actually mailed or addressed for mailing when seized, and, in both instances, the printed matter was generally held for addressing and mailing separate from the retail portions of the stores. The United States attorney at the trial pointed out that distribution of this printed matter constituted a violation of law unless the postal insignia were blocked out (R. 148). This had not been done.

² The so-called *Gotu Kola* circular and the magazine entitled "Health Today Spring 1945," involved in Information 45 CR 488 and Information 46 CR 1, Counts 1 to 12, inclusive.

THE BOOKLETS PRICED FOR SALE AND INDEPENDENTLY SOLD

Government's Exhibits 8A, 8B, and 8C are three so-called "Health Books," each plainly marked with the price thereof. All were sold by dealers independently of the sale of the products with which they are here connected; none was distributed to customers as advertising or labeling matter (R. 132, 146).

THE CONVICTION AND SUBSEQUENT PROCEEDINGS

Upon these facts the trial court filed its opinion on June 27, 1946 (R. 440-443, also reported in 66 F. Supp. 538), and judgment and sentence were pronounced on the same date.

An appeal was taken to the United States Circuit Court of Appeals for the Seventh Circuit. Upon appeal, in the court below, petitioner contended: (1) That booklets, pamphlets, and circulars, not physically accompanying a food or drug in interstate commerce, are not "labeling" as defined in, and hence are not subject to, the Federal Food, Drug, and Cosmetic Act; (2) that the booklets, pamphlets, and circulars did not accompany the articles when they were introduced or offered for introduction into interstate commerce as charged; (3) that Government's Exhibits 8 and 24 did not "accompany" any articles at any time in interstate commerce, or thereafter, but were intended for, and actually used as "mailing pieces"; (4) that a book or booklet, priced for sale and actually sold, does not "accompany" any article in interstate commerce, and does not constitute "labeling"; (5) that the trial court erred in holding that reference to a food, with honest and truthful qualifications as to its use and purposes, constituted an actionable representation that the food was a drug offered

for the cure, mitigation, treatment, and prevention of arthritis; (6) that the trial court erred in refusing to place a strict construction on the penal sections of the statute; (7) that the trial court erred in holding that the weight of proof requisite to conviction under the criminal provisions of the statute was similar to that required in the civil trial of a condemnation proceeding thereunder; (8) that in violation of his constitutional rights, defendant was prosecuted by information instead of by indictment; and (9) that the so-called "labeling" decisions relied upon by the trial court were not in point.

These contentions were rejected (R. 461 *et seq.*). The Circuit Court conceded that "no charge of falsehood is made as to the principal labels printed on the packages in which each is contained" but claimed that the test of whether printed matter "accompanies" an article is "not of physical contiguity but of textual relationship." It also found that misbranding takes places under the Act if "ignorant and gullible persons are likely to rely upon them instead of seeking professional advice." It implied that there is no distinction between "advertisements" and "labeling" under the Federal Food, Drug, and Cosmetic Act. Your petitioner's petition for rehearing was denied on or about January 22, 1948.

B

STATEMENT OF THE JURISDICTION OF THIS COURT

(1) STATUTORY PROVISION BELIEVED TO SUSTAIN THE JURISDICTION

The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 [U. S. C., Title 28, § 347(a)].

(2) THE DATE OF THE JUDGMENT TO BE REVIEWED.

The judgment of the Circuit Court of Appeals for the Seventh Circuit affirming the conviction of petitioner was entered on November 6, 1947. A petition for rehearing, timely made, was denied on or about January 22, 1948. Petitioner's time to file this petition was extended to March 15, 1948, by order of Mr. Justice Murphy. This petition, and the certified record, are filed within the time so provided.

(3) STATEMENT OF THE NATURE OF THE CASE AND THE RULINGS OF THE CIRCUIT COURT OF APPEALS BRINGING THE CASE WITHIN THE JURISDICTION OF THIS COURT.

The nature of the case (prosecutions under the Federal Food, Drug, and Cosmetic Act) has been heretofore stated. The Circuit Court of Appeals' rulings have heretofore been stated in part; it rejected your petitioner's contentions (R. 461). Each of such rulings is reviewable by this Court under the appropriate statutory provisions noted.

(4) CASES BELIEVED TO SUSTAIN THE JURISDICTION OF THIS COURT.

This Court is vested with jurisdiction under the statutory provisions heretofore specified. The cases submitted by petitioner as the basis for the exercise of such jurisdiction, to review the judgment below, are cited hereafter in connection with petitioner's reasons for the allowance of the writ of certiorari.

C

THE QUESTIONS PRESENTED

- (1) Is printed matter shipped from two to 561 days apart from the food or drug which it mentions by name "labeling" accompanying such article?

(2) Does printed matter shipped many months after the article is introduced into interstate commerce misbrand the article "when introduced and delivered for introduction into interstate commerce?"

(3) Does printed matter, shipped for mailing purposes by the dealer, accompany an article at the time it is "introduced and delivered for introduction into interstate commerce?"

(4) Do booklets, priced for sale and sold independently of an article, accompany such article at the time of the latter's shipment?

(5) Are the penal provisions of the Federal Food, Drug, and Cosmetic Act entitled to a strict construction?

(6) Is the burden of proof requisite to conviction under the criminal provisions of such statute similar to that required in the civil trial of a condemnation proceeding thereunder?

(7) Should petitioner have been prosecuted by indictment instead of information?

(8) Did the Circuit Court err in holding that labeling is false or misleading if the public is likely to rely upon statements contained therein instead of seeking professional advice?

D

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(1) In ruling (R. 463 *et seq.*) that "labeling," as defined in the Federal Food, Drug, and Cosmetic Act, includes printed matter that does not physically accompany the food or drug when introduced into interstate commerce but matter rather of "textual relationship," the Circuit Court of

Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court, viz: *Seven Cases of Eckman's Alternative v. United States*, 239 U. S. 510 (1916); *Weeks v. United States*, 245 U. S. 618 (1918); and has rendered a decision in conflict with decisions of other Circuit Courts of Appeals on the same matter, viz: *Alberty v. United States*, 159 F. 2d 278 (1947); *Urbeteit v. United States*, 164 F. 2d 245 (1947); and if the ruling below is not in conflict with the foregoing decisions of this Court, as petitioner contends, the Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

(2) In ruling (R. 463 *et seq.*) that booklets and the like, not shipped at the time of the articles, "accompany" the articles when they are introduced or offered for introduction into interstate commerce, and consequently "then and there" misbrand them, the Circuit Court of Appeals has decided a Federal question in a way probably in conflict with the applicable decisions of this Court; viz: *United States v. Sullivan*, 92 L. Ed. Adv. Opinions 305 (decided January 19, 1948); *Weeks v. United States*, 245 U. S. 618 (1918); or if the ruling below is not in conflict with the foregoing decision of this Court, as petitioner contends, the Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court; and the Circuit Court of Appeals has rendered a decision expressly in conflict with decisions of other Circuit Courts of Appeals on the same matter, viz: *Alberty v. United States*, 159 F. 2d 278 (1947); *Urbeteit v. United States*, 164 F. 2d 245 (1947).

(3) In ruling (R. 463 *et seq.*) that circulars and magazines shipped solely for mailing purposes, and booklets priced for sale and only sold "accompany" a food or drug at

the time of its introduction into interstate commerce, the Circuit Court of Appeals has decided a Federal question in a way probably in conflict with the applicable decisions of this Court, viz: *Weeks v. United States*, 245 U. S. 618 (1918); *Seven Cases of Eckman's Alterative v. United States*, 239 U. S. 510 (1916); and has rendered a decision in conflict with decisions of other Circuit Courts of Appeals on the same matter, viz: *Alberty v. United States*, 159 F. 2d 278 (1947); *Urbeteit v. United States*, 164 F. 2d 245 (1947); or if the ruling below is not in conflict with the foregoing decisions, as petitioner contends, the Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court:

(4)^o In implying (R. 466)³ that petitioner was not entitled to a strict construction of the Act, with proof of the violation beyond a reasonable doubt, the Circuit Court of Appeals has decided a Federal question in a way probably in conflict with the applicable decisions of this Court, viz: *Kraus & Bros., Inc. v. United States*, 327 U. S. 614 (1946); *United States v. Resnick*, 299 U. S. 207 (1936) and cases cited *infra* in supporting brief; and has rendered a decision in conflict with decisions of other Circuit Courts of Appeals on the same matter, viz: *United States v. Crescent-Kelvan Co.*, 3 Cir., decided Jan. 26, 1948; *Alberty v. United States*, 159 F. 2d 278 (1947); or if the ruling below is not in conflict with the foregoing decisions, as petitioner contends, the Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

(5) In ruling (R. 467) that petitioner was properly prosecuted by information and not indictment, the Circuit Court of Appeals has decided a Federal question in a way

³ The Circuit Court did make a perfunctory finding that the evidence sustained the charge beyond a reasonable doubt (R. 466).

probably in conflict with the applicable decisions of this Court, viz: *Macklin v. United States*, 117 U. S. 351 (1886); *Parkinson v. United States*, 121 U. S. 281 (1887); *Ex parte Brede*, 279 Fed. 147, *affirmed* 263 U. S. 4 (1922); or if the ruling below is not in conflict with the foregoing decisions, as petitioner contends, the Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

CONCLUSION

Each of the questions presented is of grave public importance. Unless the ruling below is reviewed, the law will be left in confusion. Prosecutions of this character are increasing in number, and the conflicts with this Court and between circuits are unmistakable. In addition, it is submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that rights under the Constitution of the United States should be preserved.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment of said Circuit Courts of Appeals be reversed by this Court, and your petitioner prays that he may have such other and further remedies in the premises as to the Court may seem appropriate and in conformity with law.

LELORD KORDEL,

Petitioner.

By ARTHUR D. HERRICK

Attorney for Petitioner

39 Broadway,

New York 6, N. Y.

Dated, New York, N. Y., February 18, 1948.

Supreme Court of the United States

OCTOBER TERM, 1947.

No.
_____LELORD KORDEL,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.
_____**BRIEF IN SUPPORT OF PETITION**

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 461 *et seq.*) has not yet been officially reported. The opinion of the district court is reported in 66 F. Supp. 538.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Seventh Circuit affirming the conviction of petitioner was entered on November 6, 1947. A petition for rehearing, timely made, was denied on January 22, 1948. Petitioner's time to file a petition for a writ was extended to March 15, 1948, by order of Mr. Justice Murphy. The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 [U. S. C., Title 28, § 347(a)].

STATEMENT OF THE CASE

A statement of the case containing all that is material to the consideration of the questions presented has been set forth in the petition and in the brief. In the interests of brevity, it is not repeated here.

ARGUMENT

The principles of law relied on by petitioner, in support of his petition for a writ of certiorari may be summarized as follows:

I.

The entire tenor and philosophy of food and drug regulation under Federal statute centers about the *product* and its transportation in interstate commerce. Thus, misbranding is not unlawful in itself; it is the interstate shipment of an article that is at that time misbranded that constitutes the offense. *Weeks v. United States*, 245 U. S. 618, 622. Printed material, possessed of a distinct identity and character *apart* from a particular food or drug, thereby loses its basic essence as "labeling" and, moreover, fails to come within the jurisdiction of the Federal Food, Drug, and Cosmetic Act whose terms are confined to the article and only printed matter incidental to, dependent upon, and physically connected with, it. The concept of "textual relationship," conjured up by the Circuit Court (R. 464), breaches this fundamental principle since it is based on mental, rather than physical, association without reference to a particular shipment. Notwithstanding the conclusions of some lower courts, the theory of the regulation as a whole, the source of the statutory terminology, the phraseology of the definition, and the legislative history, all make

it clear that "labeling," as defined in section 301(m) [21 U. S. C. 321 (m)], is limited to printed matter physically accompanying a particular food or drug during its movement in the channels of interstate commerce. This is obviously true of adulteration (where the deterioration or defect must be associated with a specific product) and only loose thinking changes the rule in the case of misbranding. *Seven Cases of Eckman's Alternative v. United States*, 239 U. S. 510, 527; *United States v. Johnson*, 221 U. S. 488; *United States v. 11 Packages of B. & M. External Remedy*, White and Gates *Decisions of Courts—Federal Food and Drugs Act*, pp. 1059, 1063; Senate Report No. 361, to accompany S. 5, 74th Cong., 1st Sess.; pp. 2, 4; *Weeks v. United States*, 245 U. S. 618, 622; *Alberty v. United States*, 159 F. 2d 278; *Urbeteit v. United States*, 164 F. 2d 245.

II.

Where the violation charged is that the food or drug was, at the time of its introduction into interstate commerce, "then and there" misbranded, printed matter shipped days, months, and years from that time cannot be considered in judging whether the product was so misbranded. Section 301, subsections (a), (b), (c) and (k), makes a different offense of each step in the interstate journey of a product, all necessarily distinct and exclusive of each other (*United States v. Sullivan*, 92 L. Ed. Adv. Opinions 305, decided January 19, 1948) and misbranding subsequent to introduction into interstate commerce must be prosecuted as an offense of a different nature. This was not done in the case at bar, the evidence introduced being directed at offenses not charged. By analogy, a food that becomes adulterated after its introduction into interstate commerce cannot support a criminal charge against

the shipper, since, judged at the time of shipment, his hands are clean. The same rule is patently applicable to misbranding. The logic of the *Alberty* and *Urbeteit* opinions is more persuasive and obviously sounder than the Circuit Court's rulings in the case at bar. *Alberty v. United States*, 159 F. 2d 278; *Urbeteit v. United States*, 164 F. 2d 245; *Weeks v. United States*, 245 U. S. 618, 622; *United States v. Phelps Dodge Mercantile Co.*, 157 F. 2d 453, cert. den., Feb. 10, 1947; *United States v. Dotterweich*, 320 U. S. 277; *United States v. Sullivan*, 92 L. Ed. Adv. Opinions 305; *United States v. 94 Doz., etc. Capon Springs Water*, 48 F. 2d 378; *United States v. J. L. Hopkins & Co.*, 199 Fed. 649; *United States v. 5 Boxes of Asafoetida*, 181 Fed 561.

III

Although, in a broad sense, labeling may be considered a form of advertising,¹ nevertheless the two terms are, of course, not synonymous and a distinction has been recognized and drawn in various legislation.² Moreover, the fact that labeling may in some respects have the same purpose as advertisements does not conversely authorize the courts to characterize forthwith all advertising as "labeling." The Circuit Court overlooked the basic logic of this proposition when it ruled what was obviously advertising material to be labeling (R. 463). *Urbeteit v. United States*, 164 F. 2d 245.

¹ This Court, for instance, in *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, said: "Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the articles to be sold . . ."

² Thus, the Federal Trade Commission Act, section 15 (a) [15 U. S. C. 55(a)] defines "false advertisement," expressly excluding labeling from the purview of the expression; and the Federal Alcohol Administration Act [27 U. S. C. 205(f)] generally defines "advertising," developing the definition in greater detail in the issued regulations. §61, Regulation 4.

In implying that petitioner was not entitled to a strict construction of the Act, with proof of the violation, if any, beyond a reasonable doubt,³ the Circuit Court abused one of the most elementary rules of criminal law, if not expressly, then in its mental concept of the weight of evidence. There can be no argument that in a criminal prosecution the Government throughout the trial has the *onus probandi*—the burden of proving beyond a reasonable doubt all the essential elements of the offense charged and the guilt of the accused. *United States v. Resnick*, 299 U. S. 207; *Holt v. United States*, 218 U. S. 245; *Agnes v. United States*, 165 U. S. 36. The rule is no different in criminal cases arising under the Federal Food, Drug, and Cosmetic Act. Indeed, in a recent decision of the Third Circuit, the Court reversed a conviction for the mere failure of the trial judge to so charge without ambiguity. *United States v. Crescent-Kelvan Co.*, 3 Cir. (decided January 26, 1948).

V

In prosecuting petitioner by information instead of indictment, the Government violated petitioner's constitutional right: He was charged with violation of section 301(a) [21 U. S. C. 331(a)], which sets forth only *one* offense, without regard to intent.⁴ He was *penalized*, however, under section 303 [21 U. S. C. 333]—headed "PENAL-

³ The Court paid lip-service to part of the rule by concluding its discussion of the argument with the statement "We think there can be no doubt of the sufficiency of the evidence to sustain the charge beyond a reasonable doubt" (R. 466).

⁴ This section reads: "(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded."

TIES"—which subjects him to possible imprisonment for not more than *three* years "in case of violation of *any of the provisions of section 331*, with intent to defraud or mislead."⁵ The crime is therefore an "infamous crime," requiring prosecution by presentment or indictment. Constitution, Fifth Amendment; *United States v. Moreland*, 258 U. S. 433; *Weeks v. United States*, 216 Fed. 292; *Falconi v. United States*, 280 Fed. 766; *De Janne v. United States*, 282 Fed. 737.

CONCLUSION

For all the above reasons, a writ of certiorari should be granted, and this Court should review, and reverse, the decision of the Circuit Court.

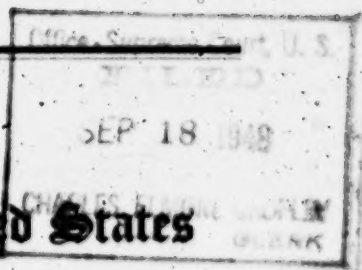
Respectfully submitted,

ARTHUR D. HERRICK,
Attorney for Petitioner.

March, 1948.

⁵ This section, so far as is pertinent, reads: "(a) Any person who violates any of the provisions of section 331 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine; . . . (b) *Notwithstanding the provisions of subsection (a) of this section*, in case of violation of any of the provisions of section 331, with intent to defraud or mislead, the *penalty* shall be imprisonment for not more than *three years*, or a fine of not more than \$10,000, or both such imprisonment and fine." . . . [Italics added.]

LIBRARY
SUPREME COURT, U. S.



Supreme Court of the United States

OCTOBER TERM, 1948.

No. 30.

LELORD KORDEL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR THE APPELLANT.

LELORD KORDEL,

Appellant,

ARTHUR D. HERRICK,

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Supreme Court of the United States

OCTOBER TERM, 1948.

No. 30.

LELORD KORDEL,
Appellant,
vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR THE APPELLANT.

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 461-467) is reported at 164 F. 2d 913. The opinion of the district court is reported (R. 440-443) at 66 F. Supp. 538.

JURISDICTION

The judgment of the circuit court of appeals for the seventh circuit affirming the conviction of petitioner was entered on November 6, 1947 (R. 468). A petition for rehearing, timely made, was denied on January 22, 1948 (R. 474). Appellant's time to file a petition for a writ was extended to March 15, 1948, by order of Mr. Justice Murphy (R. 480). The petition was filed March 5, 1948. An order allowing certiorari was filed April 19, 1948 (R. 480). The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, §1, 43 Stat. 938 [U. S. C., Title 28, §347(a)].

STATEMENT OF THE CASE

This proceeding was initiated by the filing of three criminal informations, comprising twenty counts, by the United States in the Eastern Division of the District Court of the United States for the Northern District of Illinois as causes Nos. 45 CR 488, 45 CR 490, and 46 CR 1 (R. 3-9, 19-37, 49-106). The informations charged generally that certain foods and drugs when introduced and delivered for introduction into interstate commerce were accompanied by certain circulars, which were alleged to be false or misleading, and such foods and drugs were, by reason thereof, *then and there* misbranded. Similarly, the only charge made against appellant in said informations was the violation of section 301(a) of the Federal Food, Drug, and Cosmetic Act [U. S. C., Title 21, §331(a)] which reads as follows: "The following acts and the causing thereof are hereby prohibited: (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded. . . ."

It is also material to note that appellant was prosecuted by information and not by indictment.

THE SEPARATE SHIPMENTS OF FOOD OR DRUG AND
ALLEGEDLY MISBRANDED CIRCULAR

In the counts of the informations mentioned in the footnote¹ the booklets, pamphlets, and circulars in no instance accompanied the product charged with being misbranded *at the time it was introduced into interstate commerce*. In addition, the products and printed matter were shipped from two different cities in Illinois. The time separating the shipment of the "misbranded" articles and the printed matter allegedly causing their misbranding ranged as fol-

¹ Information 45 CR 488, Information 45 CR 490, Counts 5. and 6, and Information 46 CR 1, all counts.

lows: 2, 36, 41, 58, 71, 105, 188, and 561 days (see Fig. 1, page 4 this Brief). For example, in one case (Information 45 CR 490, Count 6) the article was shipped on July 10, 1942, and the printed matter over 18 months later on January 18, 1944 (R. 35-38).

No evidence was introduced by the Government that such printing matter ever accompanied the product in a physical sense, or that any consumer received the printed matter or relied, either in making the purchase or in using the product, upon the printed matter so shipped. On the contrary, the products were generally of the nature of familiar vitamins, minerals and herbs. Where directions for use were necessary they were stated on the label (*cf.* R. 35-36, BOLAX LAXATIVE TABLETS label).

CIRCULARS AND MAGAZINES INTENDED FOR MAILING BY DEALER

Government Exhibits 8 (R. 142) and 24 (R. 158)² bore post-office mailing permit indicia, together with space for addressing. The former was shipped 36 days *after* the articles with which they are now connected; the latter six months *before* the products. The sole purpose of their shipment to the dealers was for mailing to the dealers' lists (R. 145, 146, 161, 167, 335). Most, if not all, were actually mailed (R. 146, 161, 167) or addressed for mailing when seized (R. 147), and, in both instances, the printed matter was generally held for addressing and mailing separate from the retail portions of the stores (R. 150, 162, 166). The United States attorney at the trial pointed out that distribution of this printed matter constituted a violation of law unless the postal insignia were blocked out (R. 148). This had not been done by, or at the direction of, appellant.

² The so-called *Gotu Kola* circular and the magazine entitled "Health Today Spring 1945," involved in Information 45 CR 488 and Information 46 CR 1, Counts 1 to 12, inclusive.

FIG. I—SUMMARY OF DATES OF SHIPMENTS OF ARTICLE AND
“ACCOMPANYING LABELING”

<i>Information</i>	<i>Count No.</i>	<i>Date of Shipment of article</i>	<i>Date of shipment of printed matter</i>	<i>Days separating shipments</i>
45 CR 488		Nov. 6, 1943	May 6, 1943	188
45 CR 490	5	Jan. 20, 1944	Jan. 18, 1944	2
	6	July 10, 1942	Jan. 18, 1944	561
46 CR 1	1	Jan. 22, 1945	Feb. 27, 1945	36
	2	Jan. 22, 1945	Feb. 27, 1945*	36
	3	Jan. 22, 1945	Feb. 27, 1945	36
	4	Jan. 22, 1945	Feb. 27, 1945*	36
			Nov. 13, 1944**	71
	5	Jan. 22, 1945	Feb. 27, 1945*	36
			Nov. 13, 1944**	71
	6	Jan. 22, 1945	Nov. 13, 1944**	71
	7	Jan. 22, 1945	Feb. 27, 1945	36
	8	Jan. 22, 1945	Feb. 27, 1945*	36
	9	Jan. 22, 1945	Feb. 27, 1945	36
	10	Jan. 22, 1945	Feb. 27, 1945*	36
			Nov. 13, 1944**	71
			Oct. 9, 1944 to	105
			Nov. 25, 1944***	58
	11	Jan. 22, 1945	Feb. 27, 1945	36
	12	Jan. 22, 1945	Feb. 27, 1945	36
	13	Oct. 16, 1944	Sept. 5, 1944	41

* *Health Today Spring 1945*

** *Arthritis*

*** *The Art of Relaxation*

THE BOOKLETS PRICED FOR SALE AND
INDEPENDENTLY SOLD

Government's Exhibits 8A, 8B, and 8C (R. 142) are three so-called "Health Books," each plainly marked with the price thereof. All were sold by dealers independently of the sale of the products with which they are here connected; none was distributed to customers as advertising or labeling matter (R. 132, 146).

THE CONVICTION AND SUBSEQUENT PROCEEDINGS

Upon these facts the trial court filed its opinion on June 27, 1946 (R. 440-443, also reported in 66 F. Supp. 538), and judgment and sentence were pronounced on the same date.

An appeal was taken to the circuit court of appeals for the seventh circuit. Upon appeal, in the court below, appellant contended: (1) That booklets, pamphlets, and circulars, not physically accompanying a food or drug in interstate commerce, are not "labeling" as defined in, and hence are not subject to, the Federal Food, Drug, and Cosmetic Act; (2) that the booklets, pamphlets, and circulars did not accompany the articles when they were introduced or offered for introduction into interstate commerce as charged; (3) that Government's Exhibits 8 and 24 did not "accompany" any articles at any time in interstate commerce, or thereafter, but were intended for, and actually used as "mailing pieces"; (4) that a book or booklet, priced for sale and actually sold, does not "accompany" any article in interstate commerce, and does not constitute "labeling"; (5) that the trial court erred in holding that reference to a food, with honest and truthful qualifications as to its use and purposes, constituted an actionable representation that the food was a drug offered for the cure, mitigation, treatment, and prevention of

arthritis; (6) that the trial court erred in refusing to place a strict construction on the penal sections of the statute; (7) that the trial court erred in holding that the weight of proof requisite to conviction under the criminal provisions of the statute was similar to that required in the civil trial of a condemnation proceeding thereunder; (8) that in violation of his constitutional rights, defendant was prosecuted by information instead of by indictment; and (9) that the so-called "labeling" decisions relied upon by the trial court were not in point.

These contentions were rejected (R. 461-467). The circuit court conceded that "no charge of falsehood is made as to the principal labels printed on the packages in which each is contained" but claimed that the test of whether printed matter "accompanies" an article is "not of physical contiguity but of textual relationship." It also found that misbranding takes places under the Act if "ignorant and gullible persons are likely to rely upon them instead of seeking professional advice." It implied that there is no distinction between "advertisements" and "labeling" under the Federal Food, Drug, and Cosmetic Act. Appellant's petition for rehearing was denied on January 22, 1948.

OTHER FACTS

Although other pertinent details will appear in the Argument, it seems advisable at this point to emphasize two additional aspects of the facts. Both lower court decisions seem actuated in large part by the fact that appellant is alleged to be "a self-styled authority on nutrition and vitamins" (R. 462). The courts appear more concerned with the appellant's practices as a "health food" lecturer and writer than in his constitutional rights as an American

citizen. The issue in this case is not whether appellant is or is not an "authority"; rather the important question presented is whether, as charged, appellant introduced into interstate commerce foods or drugs that were "then and there" misbranded. Both the trial court and the circuit court of appeals in their decisions ignored this charge and based their findings on what were undoubtedly considered broad considerations of social policy and significance.

This runs counter to the most elementary principles of American jurisprudence. The character of the accused is not, generally speaking, an issue in a criminal case (*Greer v. United States*, 245 U. S. 559), nor should the irrelevant nature of the product itself affect the determination of a legal proposition. In *United States v. Johnson*, 221 U. S. 488, the fact that the patent medicine before the court was *Dr. Johnson's Mild Combination Treatment for Cancer* did not swerve this Court from, in substance, emasculating the Food and Drugs Act of 1906 when legal principles so warranted.

Similarly, if previous conduct prevails, appellee will attempt to sway this Court by isolated quotations from the testimony of the expert medical witnesses (*cf.* Memorandum for the United States on Petition for Writ of Certiorari, pp. 5-6). However, since it is appellant's contention that the real merits of this appeal lie in other directions, only one example illustrative of the nature of the atmosphere prevailing at the trial and the nature of the medical testimony will be given.

Government's Exhibit 1 (*Arthritis* booklet). (R. 132) contains a number of footnotes which the prosecution has distorted to imply that the articles designated therein were offered for the cure, mitigation, treatment, and prevention of arthritis (Information 45 CR 490, Counts 1, 2, 5, and 6, and Information 46 CR 1, Counts, 4, 5, 6, and 13. R. 19-28,

29, 34-35, 36-37, 66-72, 76-77, 80, 106). The reckless nature of these charges at once becomes evident when the exhibit itself is examined. Thus, on page 5, its text suggests that carbohydrates, spicy foods, alcohol, and tobacco be eschewed in arthritis. As a footnote to the remark regarding coffee, the statement is made:

"Instead of coffee, drink Lelord Kordel's Sarsaparilla Tea. * * * If you *must* drink coffee—and arthritis shouldn't!—learn to drink it without sugar or cream, and add a few drops of lemon juice to it in order to neutralize harmful elements."

The informations charge that this innocuous statement about a beverage, suggested in lieu of coffee (R. 29):

"* * * represented and suggested and created the impression in the mind of the reader that said *drug* when taken alone, or in combination with other drugs mentioned in said booklet * * * *would be effective in the cure, mitigation, treatment, and prevention of arthritis* * * * (Italics supplied.)

The trial court, moreover, permitted the expert medical witness to render an opinion as to whether sarsaparilla tea was effective in the *cure* of arthritis (R. 308-9). The witness, it is interesting to note, failed to answer this question, but departed on a discourse relative to uric acid, implying that *another* statement in the booklet, regarding the action of coffee, was no longer accepted (R. 309). Similar footnotes, found on subsequent pages of the exhibit, are:

"For a reliable source of calcium-phosphorous-Vitamin D, try MINERALS-PLUS—which contains the two minerals *plus* 17 others in addition to Vitamin D and Chlorophyll."

"FERO-B-FLEX is an excellent iron-rich B-Complex supplement."

"BoLAX is recommended when you feel the need for a mild, yet not harsh laxative. Insist on getting BoLAX, and *refuse* substitutes!

In each instance the witness was permitted, over objection, to discuss these products in the light of their effectiveness in the "cure, mitigation, treatment or prevention of arthritis, and specially rheumatoid arthritis" (R. 312-320). No evidence was adduced that the statements, in themselves, were false or misleading.

B

STATEMENT OF THE JURISDICTION OF THIS COURT

(1) STATUTORY PROVISION BELIEVED TO SUSTAIN THE JURISDICTION.

The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 [U. S. C., Title 28, § 347(a)].

(2) THE DATE OF THE JUDGMENT TO BE REVIEWED.

The judgment of the circuit court of appeals for the seventh circuit affirming the conviction of appellant was entered on November 6, 1947 (R. 468). A petition for rehearing was denied on January 22, 1947 (R. 474). A petition for a writ of certiorari to this Court was granted on April 19, 1948 (R. 480).

(3) STATEMENT OF THE NATURE OF THE CASE AND THE RULINGS OF THE CIRCUIT COURT OF APPEALS BRINGING THE CASE WITHIN THE JURISDICTION OF THIS COURT.

The nature of the case (prosecutions under the Federal Food, Drug, and Cosmetic Act) has been heretofore stated.

The circuit court of appeal's rulings have heretofore been stated in part; it rejected appellant's contentions (R. 461). Each of such rulings is reviewable by this Court under the appropriate statutory provisions noted.

(4) CASES BELIEVED TO SUSTAIN THE JURISDICTION OF THIS COURT.

This Court is vested with jurisdiction under the statutory provisions heretofore specified. The cases submitted by appellant as the basis for the exercise of such jurisdiction, to review the judgment below, are cited hereafter.

C.

SPECIFICATION OF ASSIGNED ERRORS

(1) The lower courts erred in finding and holding that printed matter shipped from two to 561 days apart from the food or drug which it merely mentions by name is "labeling" accompanying such article.

(2) The lower courts erred in finding and holding that printed matter shipped many months after the article is introduced into interstate commerce misbrands the article "when introduced and delivered for introduction into interstate commerce."

(3) The lower courts erred in finding and holding that printed matter, shipped for distribution by mail by the local dealer, accompanies an article at the time it is "introduced and delivered for introduction into interstate commerce."

(4) The lower courts erred in finding and holding that books, priced for sale and sold independently of an article, accompany such article at the time of the latter's shipment.

(5) The lower courts erred in finding and holding that the penal provisions of the Federal Food, Drug, and Cosmetic Act are not entitled to a strict construction.

(6) The lower court erred in finding and holding that the burden of proof requisite to conviction under the criminal provisions of such statute is similar to that required in a civil proceeding.

(7) The lower court erred in finding and holding that appellant was properly prosecuted by information instead of indictment.

(8) The circuit court of appeals erred in finding and holding that labeling is false or misleading if the public is likely to rely upon statements contained therein instead of seeking professional advice.

SUMMARY OF ARGUMENT

1

The informations charged that appellant, on or about a specified date:

“ * * * then and there in violation of the Act of Congress * * * unlawfully introduce and deliver for introduction into interstate commerce from * * * to * * * a certain consignment, to wit, a carton of [the article involved, also identified by its label].

The informations go on to allege:

“That displayed upon written, printed, and graphic matter accompanying said drug when introduced and delivered for introduction into interstate commerce, as aforesaid, namely, upon a number of printed circulars * * *, which said circulars the

defendant [shipped or caused to be shipped by] to
 • • • on [*a date other than the date of the shipment
 of the consignment*] were among other things • • •
 [statement of claims].

The informations continue:

“That said drug when introduced and delivered for introduction into interstate commerce and when caused to be introduced and delivered for introduction into interstate commerce was *then and there* misbranded • • •.” (Italics supplied for emphasis. R. 3, 4, 8; 33, 34; 35, 36, 49-106.)

Appellant has been convicted of these crimes on evidence disclosing that:

1. The printed matter containing the alleged false or misleading claims in no instance accompanied the product charged with being misbranded at the time it was introduced into interstate commerce, but on the contrary was shipped from different cities in Illinois from 2 to 561 days apart from the shipment of the articles.³

2. Two of the circulars were not only shipped from one to six months apart from the articles with which they are now connected but also bore a post-office mailing permit indicia, together with space for addressing, and were intended for, and actually mailed or addressed for mailing, for that purpose being kept separate from the retail portions of the stores;⁴

³ Information 45 CR 488, Information 45 CR 490, Counts 5 and 6, and Information 46 CR 1, all counts, where the booklets, pamphlets, and circulars were introduced into, and transported in, interstate commerce wholly apart from the alleged misbranded articles involved.

⁴ Information 45 CR 488 and Information 46 CR 1, Counts 1 to 12, inclusive.

3. The three paper-bound "health" books involved were each plainly marked as to its price and were sold by the dealer independently of the display or sale of the allegedly misbranded articles made reference to only by name in their pages.⁵

The trial court found that each of the foregoing circulars, pamphlets and books constituted "labeling," as that term is defined in the Federal Food, Drug, and Cosmetic Act (R. 443). The circuit court of appeals affirmed this conclusion, invoking the novel and far-reaching concept that "the test [of accomplishment] is not of physical contiguity but of textual relationship" (R. 464).

The argument presented here will demonstrate that both courts so erred in at least two different respects:

(1) In holding that printed matter not physically accompanying a specific article at any point in interstate commerce is "labeling" as defined in the Federal Food, Drug, and Cosmetic Act; and

(2) Assuming that such printed matter does constitute "labeling," in finding appellant guilty of section 301(a) [U. S. C., Title 21, §331(a)] which is limited to the prohibition of "the introduction or delivery for introduction into interstate commerce of any food, drug, * * * *that is* * * * *misbranded.*" (Italics supplied.)

2

Appellant was entitled to a strict construction of the Act with proof of violation, if any, beyond a reasonable doubt.

3

In violation of his constitutional rights, appellant was prosecuted by information instead of by indictment.

⁵ Information 45 CR 490, all counts, and Information 46 CR 1, Counts 2, 4, 5, 6, 8, 10, and 13.

The circuit court erred in its definition of false or misleading branding.

ARGUMENT

I.

THE LOWER COURTS ERRED IN THEIR CONSTRUCTION OF THE PHRASE "ACCOMPANYING SUCH ARTICLE" BY EMPLOYING THE TEST OF "TEXTUAL RELATIONSHIP" RATHER THAN "PHYSICAL CONTIGUITY"

The entire tenor and philosophy of food and drug regulation under Federal statute centers about the *product* and its transportation in interstate-commerce. Thus, misbranding is not unlawful in itself; it is the interstate shipment of an article that is at that time misbranded that constitutes the offense. *Weeks v. United States*, 245 U. S. 618, 622. This was not only due to Congressional doubts prevailing at the turn of the century as to the constitutional validity of "interstate commerce" legislation dealing with the solicitation of sales and the expressions of opinions,⁶ but also rests on practical considerations. Thus, Fisher has pointed out in discussing S. 1944 (73rd Cong., 1st Sess., 1933)—one of the bills preceding the Federal Food, Drug, and Cosmetic Act:

"The bill's novelty lies in the manner of its attempt to control advertising: it scores not the

⁶ Cf. *United States v. Johnson*, 221 U. S. 488, 498, in which Justice Holmes avoided discussion of "the limits of constitutional power" but went on to imply that the Congress might, in governing therapeutic claims, "distort the uses of its constitutional power." The subject was only clarified in 1916 by the decision of *Seven Cases v. United States*, 239 U. S. 510, 514, 515. See also *Crenshaw v. Arkansas*, 227 U. S. 389, 396.

—movement of falsely advertised food, drug, or cosmetic packages in interstate commerce * * *. This failure to forbid the actual inundation of interstate commerce * * * narrows the scope of the control and the failure to apply the seizure provisions of the law to such articles may rob the bill's false advertising anathema of most important sanctions. *Their application would, of course, present the difficult problem of determining how long and over what territory a false advertisement would justify seizure.*" (Italics added.)⁷

Since the emphasis of the statute is on the product—whether it be food, drug, device, or cosmetic—it follows that printed matter, such as circulars, advertisements, pamphlets and books, possessed of a distinct identity and character *apart* from a particular food or drug, thereby loses its basic essence as "labeling" and, moreover, fails to come within the jurisdiction of the Federal Food, Drug, and Cosmetic Act whose terms are confined to the article and only printed matter incidental to, dependent upon, and physically connected with, it. *United States v. 7 Jugs, etc., Dr. Salsbury's Rakos*, 53 F. Supp. 746. The concept of "textual relationship," conjured up by the circuit court of appeals (R. 464), breaches this fundamental principle since it is based on *mental*, rather than physical, association without reference to a particular shipment. Notwithstanding the conclusions of some lower courts, the theory of the regulation as a whole; the source of the statutory

⁷ Fisher, "The Proposed Food and Drugs Act: A Legal Critique," *Law and Contemporary Problems*, Vol. 1, No. 1 (December, 1933, p. 77). The final bill, as amended, omitted the advertising provisions. Congressional intent is evident from the debate in the House on the first S. 5 (80 Cong. Rec. 10230-10244, 1936) and on the final measure (83 Cong. Rec. 391-424, 1938) and in the Senate on the conference report (83 Cong. Rec. 3287-3293, 1938).

terminology, the phraseology of the definition, and the legislative history, all make it clear that "labeling," as defined in section 301(m) [21 U. S. C. 321 (m)], is limited to printed matter physically accompanying a particular food or drug during its movement in the channels of interstate commerce. This is obviously true of adulteration (where the deterioration or defect must be associated with a specific product) and only loose thinking changes the rule in the case of misbranding.⁸

The term "labeling" is patently a word of legislative art, defined by section 201 [21 U. S. C. 321] as:

SEC. 201. For the purposes of this Act—

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.⁹

What is not as evident but of equal importance is that the phrase contained in the definition, "accompanying such article," is also a "word-of-art," so to speak, it being the declared intention of the drafters of the statute and of the

⁸ "Adulteration" and "misbranding" are frequently sides of the same coin. It has been observed: "Actually a relatively large proportion of 'misbranding' and 'adulteration' represents only different designations applied to the same wrong; . . ." Herrick, *Food Regulation and Compliance*, Vol. II, p. 649.

⁹ Regulation §2.2, to this section of the statute, adds the further interpretation that "labeling" includes "all written, printed, or graphic matter accompanying an article at any time while such article is in interstate commerce or held for sale after shipment or delivery in interstate commerce." However, this regulation does not add to or expand the statutory definition (*United States v. Antikamnia Chemical Co.*, 231 U. S. 654) and, moreover, is not controlling on the court (*United States v. W. B. Wood Manufacturing Co.*, *White and Gates, Decisions of Courts—Federal Food and Drugs Act*, pp. 1002, 1003, affirmed 292 Fed. 133 (C. C. A. 8, 1923)).

Congress to extend to it the significance developed by the courts in earlier decisions under the Federal Food and Drugs Act of 1906.¹⁰ As a matter of fact, the expression was taken almost verbatim from a decision of this Court, presumably with the object of having it carry the meaning therein expounded.

Thus, when the original Food and Drugs Act, enacted in 1906 (34 Stat. 768) was ruled to be inapplicable to false or misleading therapeutic claims made on the package or label of a drug (*United States v. Johnson*, 221 U. S. 488), the judicial limitation of its application was met by the enactment of the so-called "Sherley amendment" [Act of August 23, 1912, ch. 352, 37 Stat. 416], which extended the law to drugs whose

"* * * package or label shall bear or contain any statement * * * regarding the curative or therapeutic effect of such articles or any of the ingredients or substances contained therein, which is false and fraudulent."

The constitutionality of the Shirley amendment was considered by this Court in *Seven Cases v. United States*, 239

¹⁰ The adoption of terms and phrases already judicially construed was carried out throughout the Federal Food, Drug, and Cosmetic Act. The advantages of such a course are obvious, although there is no reason why it should be available to the prosecution when it suits its purpose, to be ignored where it may see an opportunity to enlarge its powers. To illustrate the adoption, the term "package," used in the earlier statute was changed to "immediate containers" in the present law (section 231 (k)) to take advantage of the statutory interpretation expressed in *McDermott v. Wisconsin*, 228 U. S. 125. This dependence on court decisions is admitted in Senate Report No. 361, to accompany S. 5, 74th Cong. 1st Sess., p. 2: "In drafting S. 5 the language of every worthy provision of the present law has been included. Only that language which afforded loopholes for the escape of the unscrupulous has been rejected. Court decisions on the provisions that have been perpetuated will thus continue to be applicable." (Italics added.)

U. S. 510 and it is in this Court's opinion that we find, for the first time, the expression "accompanies the article."

The case involved statements set forth in a circular *packed with each bottle of the medicine*. It was argued that the amendment of 1912 did not embrace circulars contained in the package, but applied only to those statements appearing on the package or on the bottles. This Court, however, refused to be limited by this restrictive interpretation, and, in over-ruling it, used the language (p. 515):

"... And the power of Congress manifestly does not depend upon the mere location of the statement *accompanying the article*, that is, upon the question whether the statement is *on* or *in* the package that is transported in interstate commerce." (Italics supplied in part.)

At a later point in the decision it repeated (p. 517):

"The false and fraudulent statement, which the amendment describes, *accompanies the article in the package*, and thus gives to the article its character in interstate commerce."¹¹ (Italics supplied.)

In adopting this phrase, there is little doubt that the drafters of the present law, and the Congress in enacting it, sought to perpetuate the import of the *Eckman* decision—namely, that "labeling" included printed matter *accompanying the article in the package*. Indeed the very termi-

¹¹ The same language, with the identical limitation as to *physical* association, was later used in a charge made to a jury in *United States v. 11 Packages of B. & M. External Remedy*, White and Gates Decisions of Courts—Federal Food and Drugs Act, pp. 1059, 1063. The court was evidently following a request made by the United States attorney, a customary procedure. It charged: "If they were false, it makes no difference whether the statements were printed on the label on the bottles, on the cartons or containers in which the bottles were shipped, or in circulars, pamphlets, or booklets *accompanying the shipment*." (Italics supplied.)

nology of the statutory definition discloses this intention. Thus, it lists printed matter (d) upon the article itself, (b) upon its container or wrapper, and (c) accompanying such article, *i. e., in the package*. Were it the purpose to establish a *new* category embracing material physically apart from the article it is reasonable to assume that the Congress would have used language expressly so stating or substantially as follows: "(1) upon any article or on or in its container and (2) accompany the article."

The subparagraph "(2)" as it now stands in section 231(m) patently relates to enclosures *in the consignment involved* only. This is also made evident by the Senate report on an earlier version of a bill bearing the same terminology (Senate Report No. 361, to accompany S. 5, 74th Cong., 1st Sess., p. 4):

"This differentiation between *label* and *labeling* is necessary because the declaration of certain facts for the information and guidance of consumers required on the label by the substantive provisions of the bill should, to accomplish their purpose, appear on the principal label or labels where they can be easily observed, rather than on side panels of the labeling or *in circulars within the package* where they may escape notice."¹² (Italics supplied.)

Also indicative of the Congressional intent is the fact that, as we have observed, the earlier drafts of the Act were

¹² Nor is this significance changed, as appellee will probably contend, by the testimony of Walter G. Campbell at the hearings before a subcommittee of the Committee on Commerce (U. S. Senate, 2d Sess., p. 16) in which he makes reference to "labeling" including "circulars and material and placards for display purposes and the like that may in any form whatever accompany the article" Mr. Campbell was obviously referring to the practice of including this type of material *with* the shipment. He said nothing of physical separation or shipment and the impression he conveyed to the subcommittee is clearly reflected in the Senate report quoted above.

drafted to include regulation over the *advertising* as well as the labeling of a food, drug, or cosmetic. Thus, S. 2800¹³ contained the following definitions distinguishing the two concepts:

“SEC. 2. As used in this Act, unless the context otherwise indicates—

(i) The term ‘labeling’ includes all labels and other written, printed, and graphic matter, in any form whatsoever, accompanying any food, drug, or cosmetic.

(j) The term ‘advertisement’ includes all representations of fact or opinion disseminated in any manner or by any means other than by the labeling.”

Yet when control over advertisements of these products was transferred to the Federal Trade Commission,¹⁴ the definition of “labeling” was allowed to remain substantially as it had—it was not expanded to include material of mental or “textual” nature such as is involved in this case! Evident here is the intent to exclude advertising material from the embrace of “labeling.”

Nor was the concept that “labeling” included printed matter wholly separated physically from the shipment invoked—or even recognized—during the first years in which the present Act was in force. On the contrary, this theory seems to have been presented to the courts only within the past few years, held in reserve, so to speak, until a body of preliminary law could be built up to buttress still a

¹³ Reprinted in full in Hearings before the Committee on Commerce, United States Senate, 73d Cong., 2d Sess., pp. 1-12.

¹⁴ See note 7, *supra*.

further advance into the field of independent advertising material.¹⁵

Appellant's interpretation is supported, not only by historic precedent, but by every rule of construction and logic. The sole approach to enforcement was, and is, directed at the *article*, be it food, drug, device, or cosmetic. For example, the law reads:

"SEC. 502. A *drug or device* shall be deemed to be misbranded—(a) if *its* labeling is false or misleading in any particular." (Italics supplied.)

Nor does the statute authorize proceedings against printed matter *per se*. "Labeling" does not, indeed cannot, possess a separate identity or existence of its own *apart from a specific food, drug, or cosmetic*; its is but a satellite's position, revolving intimately about a particular food or drug. Lacking this physical bond, this physical attachment, this physical dependence, the printed material loses its character *as labeling* and hence is not subject to the provisions of the Act. That this elementary principle was ignored by the prosecution and the lower courts is evident.

There is no doubt that in the case at bar this essential relationship of article to circulars was overlooked, or paid lip-service only at best. Obviously, the Government first directed its attention to the booklets, pamphlets and circulars. The article, it seems clear, did not enter into this preliminary investigation. Indeed, it was only *after* it concluded that the printed material bore actionable repre-

¹⁵ Cf. the step-by-step evolution presented by *United States v. Research Laboratories, Inc.*, 126 F. 2d 42, *cert. den.* 317 U. S. 656; *United States v. Lee*, 131 F. 2d 464; and *United States v. 7 Jugs, etc. Dr. Salsbury's Rakos*, 53 F. Supp. 746. The encroachment was stopped by *United States v. Alberty*, 159 F. 2d 278, and again by *United States v. Urbeteit*, 164 F. 2d 245, but not before the circuit court of appeals below had given its stamp of approval to the broadening assumption of power.

sentations that it cast about to line up, if it could, an interstate shipment of a food or drug—whose only connection with the printed material was that it bore the same title as that appearing in the booklets or circulars—to give its prosecution some semblance of compliance with the jurisdictional requirements of the law.¹⁶

Here is no legitimate prosecution of a breach of the Federal Food, Drug, and Cosmetic Act, as enacted by the Congress. On the contrary, in this instance we can only recognize an effort by a governmental agency to distort the purposes of its creation, to extend its power, by indirection and usurpation, to a field which the Congress deliberately and expressly excluded from its authority. See note 7, *supra*.

That this indignation of expression is warranted becomes evident when we examine the disparities of the interstate journeys of the articles alleged to be misbranded and their alleged "labeling." For the convenience of this Court, a chart is submitted, showing the dates of introduction into interstate commerce of the alleged misbranded articles involved and the subsequent or prior period, as the case might be, that elapsed or ensued before the so-called labeling was shipped. [See Fig. 1, p. 4, *supra*.] In none of these instances does it appear that the printed material accompanied the article when it was introduced into interstate commerce. On the contrary, at the time the article was shipped, the printed material was either not in existence or was so far removed from the article physically as to negate any suggestion that it "accompanied" it.

Appellee's attempted nexus between the article and the printed matter will, no doubt, be the assertion that the cir-

¹⁶ One need only examine the haphazard collection of shipping dates of article and "labeling"—running as far apart as almost two years—to realize how hard put the Government was to find a shipment upon which to prosecute.

culars were essential to the proper use and purpose of the product. The argument may be recognized as but a desperate attempt to save its theory of accompaniment. Even the circuit court of appeals acknowledged (R. 462) that:

"The products appear to be, for the most part, compounded of various vitamins, minerals, and herbs. No charge of falsehood is made as to the principal labels printed on the packages in which each is contained. These labels give the name of the article and distributor, content, recommended dosage, and in some cases, the alleged daily minimum requirement of the vitamins and minerals therein * * *."

But what other data are necessary to the proper utilization of such common articles so familiar today to almost every person in the land? Each product was labeled with the information required by law. Thus, the BOLAX label read (R. 35-6):

50 Tablets—Price 50¢

Lelord Kordel's

BOLAX

Laxative

Tablets

Contains Powdered T. V. Senna Leaves, Uva Ursi Leaves, Buckthorn Bark, Licorice Root, Red Clover Tops, Coriander Seed, Elder Flowers, Pale Rose Buds, Peppermint Leaves, African Ginger Root, Fennel Seed, Mexican Saffron, Aniseed, Cyani Flowers.

Distributed by.

LELORD KORDEL PRODUCTS

RUSS BLDG.

SAN FRANCISCO

DIRECTIONS: One to two tablets. Children: One-half to one tablet or less, in proportion to age. To avoid any possibility of forming the laxative habit, this preparation should be taken only when necessary. It should never be taken in cases of nausea, vomiting, abdominal pains and other symptoms of appendicitis.

In this case, moreover, the product was shipped to the dealer on July 10, 1942. Is this Court expected to believe that the article was held—either on the dealer's shelf or in the purchaser's medicine chest—until January 18, 1944 (over 18 months!), awaiting the receipt of information regarding its "intended uses"?

Furthermore, there is not one iota of evidence that the ultimate consumer relied on or required the circulars either in purchasing or using the products. Vitamins, minerals, and herbs such as these do not ordinarily call for special directions for their use; the label gives adequate information. Nor is it an unreasonable assumption that they were used without especial instructions. If the Government's theory were otherwise, certainly it should have produced witnesses to so testify; it did not.

Nor, it must be apparent to any one reading the record, was the case brought or tried on the principle that the consumer bought or used the product in reliance on the advertising material. The only association of printed matter and goods is that at one time or the other they passed through the hands of a particular dealer.

Adoption of the circuit court of appeal's theory can, moreover, lead only to a complete distortion of the law. In defining "accompaniment" in terms of "textual relationship" rather than "physical contiguity," Judge Sparks has departed further from established legal principles than has ever been attempted before. He has taken a statute that by its title is concerned with the prohibition of "the movement in interstate commerce of adulterated and misbranded food, drugs, devices, and cosmetics * * *"—all *physical* objects—and made of it a law dealing with intangibles occupying neither time nor space.

In its most elementary sense this decision implies that the mere statement in a publication years before or years

after the physical introduction of the article into interstate commerce may irrevocably misbrand that product if it can be shown that the representation was objectionable. It is but a short step further to state that an advertisement appearing in a San Francisco paper in 1947 "misbrands" a drug shipped to New York in 1945. And even where the destinations are the same, the utter illogic of this contention is evident when one realizes that the product has, in all probability, been wholly consumed long before the false or misleading statement is even uttered. This is indeed an intolerable rule for drugs where opinions are always in flux and no certainty exists. Cf. *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94; *Raladam Co. v. Federal Trade Commission*, 42 F. 2d 430, affirmed *other grounds*, 283 U. S. 643; *United States v. Johnson*, 221 U. S. 488; *Seven Cases v. United States*, 239 U. S. 510.

To avoid the opening of such a Pandora box of confusion and uncertainty, this Court should affirm the logic of the *Urbeteit* decision (164 F. 2d 245, 246) where it was stated:

"The claim alleges the printed matter was mailed Sept. 1. It did not 'accompany' in any fair sense either shipment. Both the amended libel and the second amended libel allege that the false leaflets 'accompanied said articles of device when said articles were introduced into and while said articles of device were in interstate commerce.' This is the exact language of section 304(a), the forfeiture provision of the statute, but it is shown not to be true of any shipment. The first three shipments went forward and were received by Kelsch, and put to work in his medical practice several weeks before any leaflets were sent. They did not accompany any of the devices while they were in interstate commerce. The last shipment went forward three weeks behind the leaflets, and was not accompanied by them.

Accompany means to go along with. In a criminal and forfeiture statute the meaning cannot be stretched. (Emphasis added.)

II.

THE EVIDENCE WAS NOT DIRECTED AT OR DID IT ESTABLISH THAT APPELLANT VIOLATED SECTION 301 (a).

Where the violation charged is that the food or drug was, at the time of its introduction into interstate commerce, "then and there" misbranded, printed matter shipped days, months, and years from that time cannot be considered in judging whether the product was so misbranded. Section 301, subsections (a), (b), (c) and (k), makes a different offense of each step in the interstate journey of a product, all necessarily distinct and exclusive of each other (*United States v. Sullivan*, 332 U. S. 689), and misbranding subsequent to introduction into interstate commerce must be prosecuted as an offense of a different nature. This was not done in the case at bar, the evidence introduced being directed at offenses not charged. By analogy, a food that becomes adulterated after its introduction into interstate commerce cannot support a criminal charge against the shipper, since, judged at the time of shipment, his hands are clean. The same rule is patently applicable to misbranding.

In each of the informations referred to it is notable that the date of the introduction of the food or drug into interstate commerce differs from the date of the introduction of the circular, pamphlet, or booklet; the difference extending from two days to almost two years (see Fig. 1, p. 4, *supra*). In several cases, moreover, the printed material was shipped from Mendoza, Illinois—not Chicago, Illinois, the place of origin of the article. *None of these ship-*

ments of the article, if sampled at the moment of its introduction into interstate commerce, would have been found to have been accompanied by the alleged violative "labeling."

The Federal Food, Drug, and Cosmetic Act [21 U. S. C. 331] sets forth a series of "PROHIBITED ACTS," which constitute offenses under the statute. Material to this appeal are the following:

"SEC. 303 (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

"(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

"(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

• • •

"(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or *the doing of any other act with respect to* a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded." (Italics supplied.)¹⁷

The carefully drawn pattern of the enforcement scheme of the statute becomes apparent in examining these provisions. The Congress saw that an offense might occur (1) at the point of the article entering interstate commerce; (2) while it was in interstate commerce; (3) on resale after its receipt in interstate commerce; and, to cover all contin-

¹⁷ This section has been amended since this case was brought.

gencies, (4) if it were misbranded while being held for sale after its interstate shipment. The time sequence of the series is obvious; the Congress made an offense of misbranding at each step in the trip between the shipper and the consumer, but, in doing so, made each offense separate and distinctive of the others. Thus, one offense does not begin until the prior enumerated offense terminates; nor can an offense relating to one segment of the interstate journey and distribution overlap or project itself back to another period in the trip. In short, each offense is exclusive of the others and designedly so.

It is material to note that the charge in *United States v. Sullivan*, 332 U. S. 689, was violation of section 301(k), and this Court was careful to call attention to the pattern of regulation extending coverage of the law "from the moment of their introduction into interstate commerce all the way to the moment of their delivery to the ultimate consumer," emphasizing the separate nature of each step.

Appellant has been charged in this case *only* with the first offense enumerated, that is, the introduction or delivery for introduction into interstate commerce of a drug that is misbranded. That, and that alone, is the gravamen of the charge. But where the violation occurs *after* the article has been introduced into interstate commerce there can be no breach of this provision. It is recognized, of course, that a subsequent misbranding may create *another* offense, but this fact "has no application to a charge that at the moment of introducing the drug into interstate commerce the misbranding 'then and there' occurred." *Alberty v. United States*, 159 F. 2d 278, n. 1.

That no violation of the prohibition against the introduction of a misbranded or adulterated article into interstate commerce takes place *unless* the article is misbranded

or adulterated at the time of its introduction has long been the rule and is supported by many authorities. See, for example, *Weeks v. United States*, 245 U. S. 618; *United States v. 94 Doz. etc. Capon Springs Water*, 48 F. 2d 378; *United States v. J. L. Hopkins & Co.*, 199 Fed. 649; *United States v. 5 Boxes of Asafoetida*, 181 Fed. 561. As a matter of fact, the circuit court of appeals for the ninth circuit has handed down a decision exactly in point (*Alberty v. United States*, 159 F. 2d 278). So completely controlling to the case at bar is the lucid and compelling exposition of Judge Denman in that decision that appellant is impelled to quote from the opinion at some length (p. 279):

“Section 331 (a) provides

‘Prohibited acts

The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.’ (Emphasis supplied.)

It will be noted that the verb ‘is’ is in the present tense. Section 331 (a) confines the offense to a misbranding at the ‘introduction or delivery for introduction into interstate commerce’ as recognized in the information by the use of the words ‘then and there.’

“A drug is misbranded ‘If its labeling is false or misleading in any particular.’ 21 U. S. C. §352(a) ‘Labeling’ of an article is defined to mean ‘all labels • • • accompanying such article.’ 21 U. S. C. 321 (m).

“The information charges that the false labels were shipped by appellant to the Natural Food Store at Kansas City, Missouri, on February 7, 1944, that is two months and eleven days before April 18, 1944, when the drug was ‘then and there’ introduced into

interstate commerce. It does not allege that the labels were to be placed with the drug or used together with it by the consignee. For all the information alleges, the labels may not have arrived in Missouri. Or they may have been destroyed. Or they may have been distributed to the prospective customers a month before the arrival of the drug in Missouri and hence never accompanied it there. Or they may have been used in connection with other drugs shipped and sold long prior to April 18, 1944, when the charged offense is alleged 'then and there' to have been committed.

"We do not think that the bald statement that the labels were shipped to the Missouri consignee seventy-one days before the drug was shipped charges the offense of causing them to be 'accompanying' the drug's introduction into interstate commerce on or about April 18, 1944."

The court concluded (p. 280):

"... the case was tried on a stipulation of facts which stated that the shipment of labels was received by the consignee on February 11, 1944, and the drug on April 25, 1944, clearly establishing that the two did not accompany each other when introduced into interstate commerce or at any time in that interstate transit. It was also stipulated that they were exhibited together in the consignee's store. Here there might be said to be accompaniment *after* the interstate commerce was completed, but nothing is stipulated as to appellant's then ownership or control of the drug and labels or her participancy in these later acts to bring her within 331(k), a section not involved in the information."

The persuasion and logic of this argument makes it almost unnecessary to emphasize other jurisdictional aspects evidently overlooked by the lower courts in finding

appellant guilty on these counts. The circuit court of appeals for the fifth circuit found it controlling in the *Urbeteit* case (164 F. 2d 245, 246). Indeed, Judge Sparks in the instant case went counter to it only "to the extent that the court limits the definition of the word 'accompany' to mean only physical association and contiguity" (R. 467), implying verbally—if not by his final conclusion—that he agreed with the separation of offenses that in the final analysis served as the basis of the *Alberty* decision. This Court, in *United States v. Sullivan*, 332 U. S. 689, also acknowledged its logic by implication.

A further rule of construction of the statute justifies a reversal on this ground. As this Court emphasized in *Weeks v. United States*, 245 U. S. 618, 622:

"The statute does not attempt to make either kind of misbranding unlawful in itself, but does, as before indicated, make it unlawful to ship or deliver for shipment from one State to another an article which is misbranded in either way."

Thus it is not the mislabeling that supplies the basis of the offense, but rather the *act* of introducing, or delivery for introduction of, the already *misbranded* article into interstate commerce. (Cf. *United States v. Dotterweich*, 320 U. S. 277.) That the article is subsequently rendered mislabeled has no relation to the act of introduction of a *misbranded food or drug* if it were not, in actual point of fact, misbranded *at that time*.

III.

GOVERNMENT'S EXHIBITS 8 AND 24 DID NOT "ACCOMPANY" ANY ARTICLES AT ANY TIME IN INTERSTATE COMMERCE, OR THEREAFTER, BUT WERE INTENDED FOR, AND ACTUALLY USED AS, "MAILING PIECES"

An examination of Government's Exhibits 8 and 24¹⁸ shows that they bear a post-office mailing permit indicia, together with space for addressing. They are obviously "mailing pieces," intended to be addressed and introduced into the United States mails by the dealer as advertisements. They were, moreover, shipped separately from the articles with which they are now associated as "labeling."¹⁹ The evidence is clear that the sole purpose of their shipment by the appellant to the dealers was for mailing (R. 145, 146, 161, 167, 335). It is interesting to observe that the United States attorney himself pointed out that, *unless* the postal insignia were blocked out, it constituted a violation of law to distribute them other than by mailing (R. 148). Government witnesses also established that most, if not all, of the circulars and magazines were actually mailed (R. 146, 161, 167), or were addressed for mailing when seized by the United States Marshal (R. 147). In both instances, furthermore, the printed material was generally held, for addressing and mailing, separate from the retail portions of the stores (R. 150, 162, 166).

¹⁸ The so-called "Gotu Kola" circular and the magazine entitled "Health Today Spring 1945."

¹⁹ Government Exhibit 24 was shipped in interstate commerce *six months* before the consignment of the article; Government Exhibit 8 was shipped *36 days* after the articles with which it is now connected. Both were shipped directly from the printers, one in Mendota, Ill. (R. 4), the other from Chicago (R. 50, for instance); neither, however, from the same premises or address from which the merchandise was shipped.

In no case of record that counsel can find has it ever been held, or, indeed, suggested, that a circular or magazine—intended solely for mailing through the United States mails, and, in fact, violating the law if its distribution were otherwise diverted—constitutes “labeling” by reason or the mere accident of its presence on the same premises as the food or drug. Even the decisions relied upon by the trial court failed to go to these lengths of misunderstanding. For example, in *United States v. Research Laboratories, Inc.*, 126 F. 2d 42, *cert. denied* 317 U. S. 656, the article and the circular involved not only had a common destination—wholly lacking in the case at bar where the *eventual* destination was as wide-flung as the mailing list—but, in addition, arrived at their destination simultaneously. In *United States v. Lee*, 131 F. 2d 461, the circular physically accompanied the product *over-the-counter* at the time of sale, both being offered to the purchaser at the one time. And in *United States v. 7 Jugs, etc., Dr. Salsbury's Rakos*, 53 F. Supp. 746, 755, the court emphasized that:

“What is vital here are such factors as interdependence of the drug and the booklets, common origin, common destination, *display, distribution and use together.*” (Italics supplied.)

None of these “vital factors” is present in the case at bar. Certainly, there is no “common origin, common destination, display, distribution and use together” where circulars and magazines are intended for, and actually used, as mailing pieces, and whose only connection with the articles is that they are being addressed and mailed from the rear of retail premises in which the articles may be stocked.

The Government, evidently realizing the weakness of its case, made an effort to prove that several copies of Health

Today Spring 1945 had had the mailing insignia stamped out (Government's Exhibit 10, R. 148, 334-6) *by the dealer* for purposes of distributing them over-the-counter (R. 335). The precise testimony is interesting:

"The Witness: Yes, that bears our stamp. We affixed that rubber stamp over this printed mailing franchise here for the purpose of handing them out over the counter. (R. 148) Q. Who placed that on there, do you know? A. Some of our employees. Q. Under your direction? A. Yes. (R. 334) Q. You put that rubber stamp on after you received it, didn't you? A. Yes. (R. 335)²⁰

How the lower courts could attribute such an act to the appellant, under the informations charged against him, is impossible to understand. However, that it served some basis for the judgment is evident from the finding of guilty on all counts, including those supported by these Exhibits. There is no doubt, of course, that the dealer was not an agent of appellant, (*United States v. Boise Valley Co-operative Creamery Co.*, White and Gates, *Decisions of Courts—Federal Food and Drugs Act*, p 1203). Nor was any evidence introduced that the appellant had directed or authorized this alteration (R. 149). If such an act occurred, and constituted misbranding as charged, prosecution could, and should, as a matter of fact, have been brought *against the dealer* under 21 U. S. C. 331(k)—certainly, however, not the appellant (*Alberty v. United States*, 159 F. 2d 278; *United States v. Lee*, 131 F. 2d 464).

²⁰ This testimony concerned only Government's Exhibits 8 and 10. As to Government's Exhibit 24, a prosecution witness testified: "On a circular like that we never leave them in the store for customers to pick up . . ." (R. 162-3).

IV.

A BOOK, PRICED FOR SALE AND ACTUALLY SOLD, DOES NOT "ACCOMPANY" AN ARTICLE IN INTERSTATE COMMERCE, AND DOES NOT CONSTITUTE "LABELING"

Government's Exhibits 8A, 8B, and 8C are three so-called "health books," entitled *Nutrition Guide*, *Arthritis* and *The Art of Relaxation*. The *Arthritis* and the *Nutrition* titles were plainly marked with their price; the *Relaxation* title, by one Charles B. McFerrin, was published and distributed by appellant. All were sold by dealers; none was distributed to customers in the stores as advertising matter (R. 132, 146).²¹ Indeed, even the Government inspector was required to pay for the books he took as evidence (R. 140). The prosecution claimed, and the lower courts have found, that these books, in effect, "accompanied" drugs in interstate commerce and constituted "labeling" (R. 443).

To place such a construction on these books patently distorts the intent of the statute to its utmost. Holding a book, priced for sale and distributed only on payment of its purchase price, to "accompany" an article referred to by name in its pages, is so utterly laborious and strained an interpretation as to defy justification on any grounds. By the same token, every article on the shelves of a store "accompanies" every other article, despite the fact that each calls for a separate and distinct sales transaction. In subscribing to such a concept, what happens to the factors of "interdependence of the drug and the booklets . . . display, distribution and use together" relied on in *United*

²¹ One Government witness, for example, testified that the *Arthritis* manual was only sold; was never given away; and could be purchased separately from the articles (R. 133).

States v. 7 Jugs, etc., Dr. Salsbury's Rakos, 53 F. Supp. 746, 755? Where, too, is the element of physical accompaniment at the time of the sale of the article forming the basis of the decision in *United States v. Lee*, 131 F. 2d 461? Yet these cases were cited by the prosecution and the lower courts and served as the basis, evidently, of the judgments below.

While it may be true that Regulation §2.101, under Section 502(a) of the statute, provides that false or misleading representations in the labeling of one *drug* with respect to another *drug* may render the first misbranded, it does not follow, that false or misleading representations in a book about a drug renders the book misbranding—or, for that matter, the drug so mentioned. The statute exerts no jurisdiction over books *per se*. Indeed, once a book acquires a distinct identity of its own *as a commodity*—and surely it does so when it becomes the subject of an individual transaction, as in this instance—it is not amenable to the Federal Food, Drug, and Cosmetic Act for the obvious reason that it is not a food, drug, device, or cosmetic.

This example illustrates the fallacy of the prosecution in construing “labeling” as it has done. As has been argued, printed material possessed of existence and being *physically apart* from the article cannot, in logic, be proceeded against, since it is outside the jurisdiction of the statute. To attempt, as the Government has done throughout this case, to provide the essential nexus merely by a mental association of words—briefly, by “reference”—rather than a physical connection, makes a mockery of the Congressional intent in enacting this legislation. This is no better exemplified than in the effort to characterize a book, actually and independently sold, as “labeling” to another article, also separately sold.

V.

THE PRINTED MATTER INVOLVED IS ADVERTISING MATERIAL AND
NOT LABELING SUBJECT TO THE FEDERAL FOOD, DRUG, AND
COSMETIC ACT

Although, in a broad sense, labeling may be considered a form of advertising,²² nevertheless the two terms are, of course, not synonymous and a distinction has been recognized and drawn in various legislation.²³ Moreover, the fact that *labeling* may in some respects have the same purpose as advertisements does not conversely authorize the courts to characterize forthwith all *advertising* as "labeling." The circuit court of appeals overlooked the basic logic of this proposition when it ruled what was obviously advertising material to be labeling (R. 463). *Urbeteit v. United States*, 164 F. 2d 245.

In holding as they did, it is clear that both lower courts stretched the import of the Federal Food, Drug, and Cosmetic Act to snare the appellant under any pretense for his alleged "heinous crimes." They were obviously trying a "self-styled authority on nutrition and vitamins" (R. 462), rather than a specified violation of a particular Federal statute.

Thus both tacitly admitted that when the products were introduced into interstate commerce they were properly

²² This Court, for instance, in *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, said: "Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the articles to be sold * * *"

²³ Thus, the Federal Trade Commission Act, section 15 (a) [15 U. S. C. 55(a)] defines "false advertising," expressly excluding labeling from the purview of the expression; and the Federal Alcohol Administration Act [27 U. S. C. 205(f)] generally defines "advertising," developing the definition in greater detail in the issued regulations. §61, Regulation 4.

labeled. But this very honesty was viewed as a devious "scheme" (R. 465)! However, despite the efforts of the courts to "protect" the public from "quite harmless" drugs (R. 465), to construe separate advertising material, whose only connection with the article is the similar name of the product, as "labeling," on the ground that it would "permit evasion of the Act" ignores Congressional intent and totally overlooks, moreover, that at least two *other* Federal statutes could deal with this printed matter were it unlawful. As a matter of fact, the Federal Trade Commission Act and the Criminal Code (§215, 18 U. S. C. §338) both have jurisdiction over such acts. Certainly it is not necessary to distort the scope and intendment of the Federal Food, Drug, and Cosmetic Act to bring a culprit to justice. Again, if the possibility of evasion exists, it is the duty of the Congress to correct the situation, not the courts.

VI.

APPELLANT WAS ENTITLED TO A STRICT CONSTRUCTION OF THE ACT WITH PROOF OF VIOLATION, IF ANY, BEYOND A REASONABLE DOUBT

In implying that appellant was not entitled to a strict construction of the Act, with proof of the violation, if any, beyond a reasonable doubt,²⁴ the lower courts abused one of the most elementary rules of criminal law, if not expressly, then in their mental concept of the weight of evidence. There can be no argument that in a criminal

²⁴ The circuit court of appeals paid lip-service to part of the rule by concluding its discussion of the argument with the statement "We think there can be no doubt of the sufficiency of the evidence to sustain the charge beyond a reasonable doubt" (R. 466). The trial court clearly gave the impression that this degree of proof was unnecessary in this case (R. 441, 443).

prosecution the Government throughout the trial has the *onus probandi*—the burden of proving beyond a reasonable doubt all the essential elements of the offense charged and the guilt of the accused. *United States v. Resnick*, 299 U. S. 207; *Holt v. United States*, 218 U. S. 245; *Agnes v. United States*, 165 U. S. 36. The rule is no different in criminal cases arising under the Federal Food, Drug, and Cosmetic Act. Indeed, in a recent decision of the third circuit, the court reversed a conviction for the mere failure of the trial judge to so charge without ambiguity. *United States v. Crescent-Kelvan Co.*, 3 Cir. (decided January 26, 1948).

Yet we find the trial court finding that the Federal Food, Drug, and Cosmetic Act, "being 'remedial legislation,' the rule of liberal construction is to be followed irrespective of its penal provisions" (R. 441) and, in effect, treating this prosecution as a civil proceeding. In fact, it went further. In justifying its "liberal construction" it remarked (R. 443) that "the element of forfeiture in a statute is as much a penal provision as is the one imposing a penalty," without appreciating that the general rule in this connection is that "statutes imposing forfeitures, being penal in nature, are to be strictly construed in favor of the defendant." *C. C. Co. v. United States*, 147 F. 2d 820, 824. The circuit court of appeals compounded this error (R. 466).²⁵

Evidently overlooked by the courts was the fact that the statute is, in a very real sense, an "omnibus" law, providing for civil, criminal, and administrative enforcement.

²⁵ The court cited, in support, *United States v. Dotterweich*, 321 U. S. 277, which, of course, merely makes it unnecessary in these prosecutions to prove criminal knowledge and intent. In fact, this Court reiterated its confidence in established legal experience and principles—"the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries."

The Government would be the first to acknowledge that the degree of proof required in its administrative proceedings differs from that of civil or criminal cases (*Cf. The James J. Hill*, 65 F. Supp. 265). Moreover, the *objective* of its enactment has no bearing on the *construction* of the various remedies available to the Government. Penal statutes whether incorporated in general statutes or not, are clearly subject to a strict construction and are to be interpreted strictly against the Government and liberally in favor of an accused (*United States v. Resnick*, 299 U. S. 207).

In *Alberty v. United States*, 159 F. 2d 278, 280, the ninth circuit distinguished between the construction in civil proceedings and in criminal prosecutions arising from this very statute. In dismissing the cases cited by the Government in its brief, it remarked:

"These three cases were civil proceedings and not criminal prosecutions. They construe the Act liberally."

The court went on to quote *Kraus & Bros., Inc. v. United States*, 327 U. S. 614, 621, which, it pointed out, construed "in a criminal proceeding the Emergency Price Control Act which, like the Food, Drug, and Cosmetic Act, also afforded civil relief." The language of this Court so repeated was:

"This delegation to the Price Administrator of the power to provide in detail against circumvention and evasions, creates a grave responsibility. In a very literal sense the liberties and fortunes of others may depend upon his definitions and specifications regarding evasion. Hence to these provisions must be applied the same strict rule of con-

*struction that is applied to statutes defining criminal action. * * ** (Italics supplied.)

As this Court stated in *United States v. Sullivan*, 332 U. S. 689, 693-4; criminal statutes "should be given their fair meaning in accord with the evident intent of Congress. *United States v. Raynor*, 302 U. S. 540, 552." But this does not mean that so-called "remedial legislation" should be treated as a "blank check" from the Congress to enforcement agencies, permitting all forms of distortion and a callous disregard of constitutional rights in the name of "liberal construction." We have been taught that Liberty is not License—the aphorism is likewise applicable to our subject.

There appears no doubt that, in their anxiety to accomplish the "remedial" objects of the law, the lower courts overlooked the essential requirement that, even in this type of legislation, the burden, in proceedings for violating the criminal provisions of the statute, is upon the Government to establish its case beyond a reasonable doubt (*Von Bremen v. United States*, 192 Fed. 904 (C. C. A. 2, 1912); *United States v. Newton Tea & Spice Co.*, 275 Fed. 394; *United States v. American Laboratories*, 222 Fed. 104; *United States v. Mayfield*, 177 Fed. 765). A reading of the record makes it clear that the prosecution failed to prove its case against appellant beyond a reasonable doubt. The mental attitude of the trial court, moreover, was such that it did not look for this high degree of proof. The failure of the trial court to keep in mind this elementary safeguard of the appellant's constitutional rights is clearly reversible error.

VII.

IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS, APPELLANT WAS PROSECUTED BY INFORMATION INSTEAD OF BY INDICTMENT.

The Fifth Amendment to the United States Constitution imposes the requirement that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." It is elementary, of course, that there can be no conviction or punishment for a crime without a sufficient accusation; indeed, the court acquires no jurisdiction to try a defendant for a criminal offense unless he has been charged in the form and mode required by law. "If that is wanting, his trial and conviction is a nullity * * *" (*Weeks v. United States*, 216 Fed. 292, 293).

An infamous crime, within the contemplation of the Bill of Rights, is governed, not by the character of the crime, but rather by the nature of its punishment (*Weeks v. United States*, 216 Fed. 292). Generally, a crime punishable by imprisonment in a penitentiary is "infamous." Under current statutory provisions (18 U. S. C. 541), a crime punishable for more than one year, may be prosecuted *only* by indictment or presentment (*Falconi v. United States*, 280 Fed. 766), unless waived in open court by the defendant, after he has been advised of the nature of the charge and his rights (Rule 7 (b), *Rules of Criminal Procedure*). The record does not show such a waiver.

Appellant was prosecuted herein by information (R. 3-13, 19-41, 49-116).

Since the crimes with which he was charged clearly fall within the accepted definition of an "infamous offense," appellant has been deprived of his liberty and property without due process of law (*Weeks v. United States*, 216

Fed. 292). The penalty provisions of the statute read [21 U. S. C. 333 (a) and (b)]:

PENALTIES.

SEC. 303. (a) Any person who violates any of the provisions of Section 301 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine; * * *

(b) *Notwithstanding the provisions of subsection (a) of this section, in case of violation of any of the provisions of Section 301, with intent to defraud or mislead, the penalty shall be imprisonment for not more than three years, or a fine of not more than \$10,000, or both such imprisonment and fine.*" (Italics supplied.)

Appellant was charged, in all informations, with "the introduction or delivery for introduction into interstate commerce of any food * * * that is * * * misbranded." There is only *one* such offense stated in the statute (21 U. S. C. 331 (a))—not *two*, one with, and one without intent to defraud or mislead (*Cf. United States v. Dotterweich*, 320 U. S. 277). The additional period of imprisonment (up to three years) is found, moreover, not in the "offense" section of the statute, but in the "penalties" section. In short, it goes to the *penalty* that the court *may* impose after hearing the evidence adduced and considering all facts in aggravation or mitigation of the offense.²⁸

²⁸ The fact that the court did not actually impose a sentence in excess of one year is not material; it is the sentence that the court *may* impose, and not what it does impose, that determines whether the crime is an "infamous" one (*United States v. Moreland*, 258 U. S. 433; *De Jianne v. United States*, 282 Fed. 737 (C. C. A. 3, 1922)). Nor is it controlling that the statute designates violations as misdemeanors (*Ex parte Brede*, 279 Fed. 147).

A reasonable construction of the statute demonstrates that appellant, on the charges brought against him, may have been penalized by imposition of a prison term in a penitentiary and in excess of one year. The crime must therefore be designated as an "infamous" one, requiring that he be prosecuted by presentment or indictment of a grand jury. Since this was lacking, his trial and conviction was a nullity (*Weeks v. United States*, 216 Fed. 292).

The circuit court of appeals evidently based its rejection of this argument on *United States v. Wells*, 186 Fed. 248, "holding violation of the 1906 Food and Drugs Act not an infamous crime" (R. 467). It is true that under the prior Act it had been held that offenses were not infamous, but could be brought on information. See, in addition, *Weeks v. United States*, 216 Fed. 292; *Frank v. United States*, 192 Fed. 864. It should be noted, however, that the maximum penalty thereunder, for a first offense, was a fine not exceeding \$200; subsequent offenses could be penalized with a fine of \$300, or less, or imprisonment not exceeding one year, or both. Section 2. Obviously, under no circumstances could violations be considered "infamous crimes."

It is not unreasonable or without precedent for the Congress to have left with the trial judge the right to impose alternate penalties for the same crime, depending on the manner of its commission, and to give to the court the right to impose the more severe penalties of section 303(b). Indeed, this merely follows the general tenor of the Act which similarly grants the Federal Security Administrator analogous powers in regard to "minor violations"—he may report them for prosecution, or not, as he deems fit (Section 306; *United States v. Sullivan*, 332 U. S. 689).

It further appears to be appellee's contention that before the more severe penalties of section 303(b) are imposable, appellant would have had to have been charged

with the intent to defraud or mislead. This argument is without foundation. In *Husty v. United States*, 282 U. S. 694, this Court had before it construction of the Jones Act amendment to the National Prohibition Act, where a like discretion in imposing sentence was involved. Its decision in that case serves as a complete answer to appellee (pp. 702-3):

"It is urged that the indictment is defective, because it fails to state whether the offenses charged were felonies or misdemeanors, or whether the petitioners were charged with casual or slight violations of the law, which, petitioners argue, were made new or aggravated offenses by the Jones Act.

"But the Jones Act created no new crime. It increased the penalties for 'illegal manufacture, sale, transportation, importation or exportation,' as defined by §1, title II of the National Prohibition Act, to a fine not exceeding \$10,000, or imprisonment not exceeding five years, or both, and added as a proviso, 'that it is the intent of Congress that the court, in imposing sentence hereunder, should discriminate between casual or slight violations and habitual sales of intoxicating liquor, or attempts to commercialize violations of the law.' *As the Act added no new criminal offense to those enumerated and defined in the National Prohibition Act, it added nothing to the material allegations required to be set out in indictment for those offenses. The proviso is only a guide to the discretion of the court in imposing the increased sentences for those offenses for which an increased penalty is authorized by the Act.*" (Italics supplied.)

Moreover, it is clearly established that a court, in imposing sentence, is *not* confined to the evidence adduced at the trial, but may, where it has discretion to fix punish-

ment, consider other evidence as to matters which may be an *aggravation* or mitigation of the offense, although not admissible on the issue of guilt or innocence. *Hunter v. United States*, 149 F. 2d 710, 711, *cert. den.* 326 U. S. 787; Rule 32, Federal Rules of Criminal Procedure. It is also interesting to note that the form of information or indictment for food and drug violations suggested in the Federal Rules of Criminal Procedure (Form 11, Appendix of Forms) does not provide for the alternate allegation of "intent to defraud or mislead."

VIII.

THE CIRCUIT COURT ERRED IN ITS DEFINITION OF FALSE OR MISLEADING BRANDING.

Lacking any really serious charge either against the articles involved or the claims made on their behalf, the circuit court of appeals evolved a most curious—and inherently irresponsible—definition of the phrase " . . . false and misleading in any particular." It stated (R. 465-466):

"Thus the scheme devised by appellant for the distribution of his products and related literature contemplates an elaborate system of self-diagnosis and medication. The danger inherent in this system lies not in any positive unwholesomeness of the articles themselves. As to them as such there is no charge and it may be that they are quite harmless in and of themselves. The danger, however, lies in the fact that ignorant and gullible persons are likely to rely upon them instead of seeking professional advice for conditions they are represented to relieve or prevent. . . . Since the literature . . . em-

bodies such misleading representations, it constitutes misbranding within the meaning of the Act."

In holding that misbranding takes place if "ignorant and gullible persons are likely to rely upon them instead of seeking professional advice" (R. 465) the circuit court of appeals was an unwitting victim of the outstanding argument of organized medicine against the use of all but a very few so-called "patent medicines." It is not unreasonable for physicians, as a group, to disparage and belittle self-medication; it is, however, wholly unreasonable for this Court or any other court to give sanction to this "trade argument" by its decision.

In simple logic, the rule thus promulgated by the circuit court spells the death-knell of *all* proprietary preparations—and indeed *all* self-medication. For using its test (R. 466), who is to say that a simple cough may not be symptomatic of cancer of the throat, that a laceration might not lead to septicemia, that a headache may not be the first sign of a brain injury? Since a large portion of the population eventually die of some fatal disease, medical witnesses can always solemnly propound the attitude they have so pompously announced during this trial. Under these circumstances, obviously *no* self-medication is "safe." Yet that is the effect of the ruling.

Why issue such a "blank check" to organized medicine? Is there any assurance of a cure or of perpetual life if one is attended by a physician? Is the practice of medicine of such perfection as to insure recovery from all human ills? Evidently, the circuit court of appeals for the fifth circuit in the *Urbeteit* decision (164 F. 2d 245, 248) did not think so when it so pertinently pointed out:

"The most eminent physicians and scientists have in the past erred in their opinions . . ."

Certainly this Court should give serious consideration to a decision which contains so many radical and untenable innovations in the law and its application to food and drugs.

CONCLUSION

For all the above reasons, the judgment should be reversed, the case remanded, and the informations ordered dismissed.

Respectfully submitted,

ARTHUR D. HERRICK,
Attorney for Appellant.

September 16, 1948.

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Supreme Court of the United States

OCTOBER TERM, 1948.

No. 30.

LELORD KORDEL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF.

LELORD KORDEL,

Appellant,

ARTHUR D. HERRICK,

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Supreme Court of the United States

OCTOBER TERM, 1948.

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REPLY BRIEF.

I.

In the case at bar the Government has relied, to a considerable extent, upon its argument made in its brief filed in No. 13, *United States v. Urbeteit*. It may be necessary, therefore, to emphasize certain differences existing between the two cases.

In the first instance, this is a criminal appeal; the *Urbeteit* case involves only a civil proceeding, that of seizure on libel for condemnation. Since, in such a case, the district court acquires jurisdiction by the presence of the property within the district (*United States v. Spraul*, 185 Fed. 405; *United States v. 2 Barrels of Desiccated Eggs*, 185 Fed. 302; *United States v. 100 Barrels of Vinegar*, 188 Fed. 471; *United States v. 94 Dozen, etc., Capon Springs Water*, 48 F. 2d 378, 30 F. 2d 300), it is relatively simple to determine whether or not specified printed

matter "accompanies" the drug.¹ In a criminal prosecution, however, this essential nexus must be affirmatively and factually proved *beyond a reasonable doubt*—a degree of proof clearly unpalatable to the trial court herein.

Again, in its *Urbeteit* brief (p. 13), the Government argues:

"The Government submits that a leaflet which (a) explains the uses to be made of a device, (b) is sent in interstate commerce by the same shipper to the same consignee, and (c) is displayed with and is intended to be distributed with the device, 'accompanies' the device. * * *"

If this be the appellee's position, it has conceded defeat in this case. For the admitted facts show that this appellant (1) fully and honestly labeled each product with *all* information required by the Congress and the Federal Security Administrator, giving whatever data necessary fully to inform purchasers as to its value, use, and purposes,² (2) did not send the goods and the printed matter under question to the same consignee, i.e., to the consumer, but rather to an intermediate point, so to speak: a dealer—and, of course, at far divergent times; and (3) did not display or authorize their display together with the goods nor

¹ This is obviously a fatal weakness of the Government's case in the *Urbeteit* case, the district court never having acquired jurisdiction of the advertising material.

² The vitamins and minerals, for example, were labeled in full accord with the requirements of the Special Dietary Regulations to sec. 403(j). Cf. *Federal Security Administrator v. Quaker Oats Co.*, 318 U.S. 218. Laxative preparations carried "adequate" directions for use in compliance with sec. 502(f). It is well-known that the Act was designed to require manufacturers "to disclose affirmatively all pertinent information relating to" the product. Herriek, *Food Regulation and Compliance*, Vol. 1, p. 98. This appellant obviously did on the labels annexed to the goods. Otherwise the informations would have alleged misbranding of the labels also; they do not. Cf. R. 462.

intend them to be distributed with the product.³ Patently, no clear straight line can be drawn from the appellant to a particular consumer, as in the *Urbeteit* case. Instead the nexus is so tortuous and involved and fortuitous as to negate such an assumption. In each instance, moreover, the ultimate recipients of the article and of the printed matter could not be identified as the same person. The Government's attempts to show a connection rest on the flimsy accident that both goods and printed matter, at one time or another, accidentally passed through the hands of a dealer.

Finally, of course, the case at bar presents several important constitutional questions not involved in the *Urbeteit* appeal.

II.

In the final analysis, the answer to the question of whether or not "labeling" is confined to the package in a physical sense rests on the intent of the Congress in enacting this legislation. *United States v. Sullivan*, 332 U. S. 689, *United States v. Raynor*, 302 U. S. 540. In determining this intent, the Government is forced to fall back on the statement made by Walter G. Campbell, then Chief of the Food and Drug Administration, at the Hearings Before a Subcommittee of the Committee on Commerce, United States Senate, 73rd Congress, 2nd Sess., on S. 1944, p. 16 (See *Urbeteit* brief, p. 20). On this statement, the Government makes the unsupported assumption:

"Clearly, therefore, the 1938 Act made the concept of 'labeling' more comprehensive than that which existed under the earlier law, * * *"

³ The wide differences in shipping dates, ranging up to two years, the imprinting of a postal insignia for mailing purposes, the selling price placed on three books—all mitigate against an intention that they were to be distributed with the products.

This conclusion obviously distorts Mr. Campbell's testimony. In fact, the witness *confirmed* that "label" and "labeling" under the new law *duplicate* their significance under the 1906 statute! Thus, he testified:

"At the present time the law has control over those statements that are attached to or that accompany the package in the form of circulars. For the purposes of the subsequent requirements of this bill these have been divided into two classes; first, 'label' meaning the principal label or labels upon the immediate container of any food, drug, or cosmetic, and upon the outside container or wrapper, if any there be, of the retail package of any food, drug, or cosmetic. Then the term 'labeling' is defined so as to include not only the label but all circulars and material and placards for display purposes and the like that may in any form whatever accompany the article of food, drug, or cosmetics." (Italics supplied.)

Actually, what the Government has overlooked is that at the time Mr. Campbell so testified there was no reason to press for an expansion of the labeling definition—the draft of the bill before the Congress expressly embraced control over advertising! (S. 1944, sec. 2(j).) Nor, when the advertising provision was deleted by Congress, in the final measure passed, could an attempt be made to expand the definition of labeling in the face of express Congressional unwillingness and opposition to the granting of jurisdiction over this field to the Food and Drug Administration.

It is clear and impossible of contradiction, therefore, that the definition of "label" and "labeling" merely continued the meaning expressed in *Seven Cases v. United States*, 239 U. S. 510, being confined to printed matter in the package, broken down to two portions merely to sim-

plify the statements of labeling requirements. See Senate Report No. 361, to accompany S. 5, 74th Cong., 1st Sess. p. 4, cited appellant's brief, p. 19.

The Government, incidentally, questions appellant's contention that the drafters of the present Act adopted the phraseology "accompanying such article" from the *Seven Cases* decision, with the intention that it carry the same significance. Mr. Campbell, in his testimony at the Hearings cited, confirmed this adoption of "court-decision" phrases. He admitted, for example, that the definition of false or misleading labeling (S. 1944, sec. 6(a)) had taken the phrase "by ambiguity or inference creates a misleading impression" verbatim from a decision of this Court (evidently *United States v. 95 Barrels, etc., Apple Cider Vinegar*, 265 U. S. 438). Here is his testimony on the point (pp. 70-1):

"If I may explain briefly, Senator, our purpose in using that language was to employ the most explicit terms possible in writing the definition. That is made possible by using the language of the Supreme Court in interpreting the existing terms of the act defining misbranding. * * * Now, in interpreting the last four words [misleading in any particular] the Supreme Court has said in the decision to which I referred that deception may result from inference and ambiguity. * * * Our thought was that if the bill carries in specific words the interpretation of that language, as expressed by the Supreme Court, it will apprise manufacturers more completely of their responsibility." (Italics supplied.)

III.

The Government argues that to limit "labeling" to printed matter physically accompanying the article would in effect emasculate the statute. But for over a quarter-

of-a-century such was the law without materially vitiating statutory protection.

It is also interesting to observe that the same argument was presented to the Congress at the Hearings cited above. Mr. Campbell urged (p. 67):

“The protection of the public against deception is a proper part of this legislation. If it cannot be extended to advertising, the purpose of the bill, and certainly its practical effects, will fall to the ground.”

In the face of this plea, the Congress nevertheless struck from the measure finally enacted control over advertising, giving it instead to the Federal Trade Commission, who incidentally still enforces analogous provisions.

Respectfully submitted,

ARTHUR D. HERRICK,
Attorney for Appellant.

October 8, 1948.

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(1)

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 645

LELORD KORDEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 461-467) is reported at 164 F. 2d 913. The opinion of the district court (R. 440-443) is reported at 66 F. Supp. 538.

JURISDICTION

The judgment of the circuit court of appeals was entered November 6, 1947 (R. 468), and a petition for rehearing was denied January 22, 1948 (R. 474). On February 16, 1948, Mr. Justice Murphy extended the time for filing a petition for a writ of certiorari to and including

March 15, 1948 (R. 480). The petition was filed March 5, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether pamphlets and circulars claiming therapeutic values and containing instructions for use of drugs shipped in interstate commerce are printed or graphic matter "accompanying" the drugs, and thus constitute "labeling" within the meaning of Section 201 (m) of the Federal Food, Drug and Cosmetic Act, where the literature was shipped separately from the drugs but was supplied to the consignees for the purpose of furnishing additional information to prospective consumers concerning the usefulness of the drugs in curing disease.

2. Whether petitioner should have been prosecuted by indictment rather than information.

STATUTE INVOLVED

The Federal Food, Drug, and Cosmetic Act of June 25, 1938, c. 675, 52 Stat. 1040 (21 U. S. C. 301, et seq.), provides in pertinent part:

SEC. 201. For the purposes of this Act—

* * * * *

(m) The term "labeling" means all labels and other written, printed, or graphic

matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

SEC. 301. The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery, for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

SEC. 303. (a) Any person who violates any of the provisions of section 301 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final such person shall be subject to imprisonment for not more than three years, or a fine of not more than \$10,000, or both such imprisonment and fine.

(b) Notwithstanding the provisions of subsection (a) of this section, in case of a violation of any of the provisions of section 301, with intent to defraud or mislead, the penalty shall be imprisonment for not more than three years, or a fine of not more than \$10,000, or both such imprisonment and fine.

SEC. 502. A drug or device shall be deemed to be misbranded—(a) If its labeling is false or misleading in any particular.

STATEMENT

Three informations containing a total of 20 counts charging violations of Section 301 (a) of the Federal Food, Drug, and Cosmetic Act were filed against petitioner in the District Court for the Northern District of Illinois (R. 3-9, 19-37, 49-106).¹ Each count alleged that on a specified date petitioner shipped in interstate commerce a consignment of drugs to a named consignee; that certain literature accompanied the drug; and that the drug was misbranded within the meaning of the Act in that the statements in the accompanying literature were false and misleading.

The informations were consolidated for trial (R. 119) before the court, a jury having been waived (R. 124). The parties stipulated the facts showing that petitioner shipped the drugs in question in interstate commerce to the consignees named in the informations (R. 432-439). The nature of the evidence as to each count is illustrated by the following summary of the evidence in respect of the charge in the first information, 45 Cr. 488 (R. 3-9):

Petitioner writes and lectures on health foods on the basis of information obtained from reading books in his private library and in libraries throughout the United States (R. 416-417).

¹ One Laura Kordel was also charged as a codefendant in one of the informations (45 Cr. 488), but she was acquitted (R. 444).

Since January 1941, he has been marketing his own health food products (R. 417). In November 1943, he shipped from Chicago, Illinois, a quantity of a drug called "Gotu Kola" to a health food concern in Cincinnati, Ohio, and the shipment was received by the consignee. Six months earlier, in May 1943, he caused to be shipped to the same consignee thousands (R. 162) of circulars entitled, "Does this Exotic Plant From Ceylon Hold the Answer to Man's Search for the Secret of 'Rejuvenation'?" (R. 432.)² The labels affixed to the containers of the drug bore no statements as to the purposes for which the drug was intended to be used, declaring only that it was intended as a dietary supplement for experimental use and that the need in human nutrition of the principal ingredient had not been established (see R. 4). The circulars, however, represented and suggested the use for the drug (see R. 4-7). The circulars were designed for mailing and some appear to have been mailed to prospective customers (R. 161, 167). Others were placed in open view throughout the consignee's health food store, near petitioner's product and were available to anyone who came into the store (R. 166-167). An expert medical witness testified in detail concerning the statements in the circular, and he stated that they were totally false (R. 380-397). He character-

² The pertinent portions of the text of the circular are set forth in the information (R. 5-7).

ized various statements as "fantastic" and "untrue" (R. 390); as "reprehensible and artistic lying" (R. 392); as "perfect stupidity" and "misleading" (R. 393); as "false" (R. 394); and "interesting fiction" (R. 395); and as "really dangerous to the public and individual health" (R. 396).

Petitioner was convicted on each of the twenty counts and he was sentenced to pay a fine of \$200 on each count (R. 444-446). Upon appeal to the Circuit Court of Appeals for the Seventh Circuit, the judgments were affirmed (R. 468).

ARGUMENT

1. The principal question presented by the petition for a writ of certiorari—whether the circulars accompanied the drugs within the meaning of the Act—is presently before this Court on similar facts on our petition for a writ of certiorari in *United States v. Fred Urbeteit*, No. 577. In that case the Circuit Court of Appeals for the Fifth Circuit held that the product and such literature must accompany each other in a physical sense and thus adopted a construction which is squarely in conflict with the decision below. Our views in support of the decision of the Seventh Circuit in this case and in opposition to the Fifth Circuit's position are fully set forth in the petition in the *Urbeteit* case. In view of the conflict of decisions, we join in the petition for a writ of certiorari in this case, limited to this question.

2. The other questions which petitioner raises are not substantial. There is no occasion to argue whether the Federal Food, Drug and Cosmetic Act should be strictly construed, as petitioner urges (Pet. 15). For as recently as the decision in *United States v. Sullivan*, 332 U. S. 689, decided January 19, 1948, this Court stated (pp. 693-4) in construing that Act:

Although criminal statutes must be so precise and unambiguous that the ordinary person can know how to avoid unlawful conduct, see *Kraus & Bros., Inc. v. United States*, 327 U. S. 614, 621-622, even in determining whether such statutes meet the test, they should be given their fair meaning in accord with the evident intent of Congress. *United States v. Raynor*, 302 U. S. 540, 552.

Similarly, it unquestionably was the burden of the prosecution to prove the commission of the offenses beyond a reasonable doubt, as petitioner suggests (Pet. 15). The court below held that "there can be no doubt of the sufficiency of the evidence to sustain the charge beyond a reasonable doubt" (R. 466). No one disputes the rule, and it is plain that it was adhered to in this case.

Finally, the contention (Pet. 15-16) that the prosecution should have been by indictment misconceives the nature of the offenses of which petitioner was convicted. Section 303, the penal section of the Act, provides that a violation of Section 301 shall be a misdemeanor punishable

by imprisonment for not more than one year, or a fine of not more than \$1,000, or both. If, however, the offense occurs after the defendant has previously been convicted of a similar offense or if the offense is committed with intent to defraud or mislead, it is punishable by imprisonment for not more than three years, or a fine of not more than \$10,000, or both. The informations did not charge either that the offenses were committed with intent to defraud or mislead or after a prior conviction of a similar offense. Instead, they alleged misdemeanors as described in Section 303 (a). Since these offenses were not punishable by imprisonment for a term exceeding one year or at hard labor, they were properly prosecuted by information. See Rule 7 (a) of the Federal Rules of Criminal Procedure.³

CONCLUSION

We respectfully submit that in view of the conflict of decisions on the question discussed in

³ The informations were filed prior to the effective date of the Rules; but Rule 7 (a) plainly restates the prior existing law. See the note of the advisory committee. Rule 7 (a) provides:

"Use of Indictment or Information.—An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. An information may be filed without leave of court."

point 1 of the Argument, *supra*, certiorari should be granted, limited to that question. Petitioner's other contentions raise no questions which require further review by this Court.

PHILIP B. PERLMAN,
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APRIL 1948.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 30

LELORD KORDEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 461-467) is reported at 164 F. 2d 913. The opinion of the district court (R. 440-443) is reported at 66 F. Supp. 538.

JURISDICTION

The judgment of the Court of Appeals was entered November 6, 1947 (R. 468), and a petition for rehearing was denied January 22, 1948 (R. 474). On February 16, 1948, Mr. Justice Murphy extended the time for filing a petition for a writ of certiorari to and including March 15, 1948 (R. 480). The petition for a writ of certiorari was filed March 5, 1948, and was granted April 19, 1948 (R. 480). The jurisdiction of this Court is conferred by Section 240 (a)

of the Judicial Code as amended by the Act of February 13, 1925, now 28 U. S. C. 1254. See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether petitioner's shipments of certain drugs in interstate commerce were "accompanied" by false and misleading literature and hence were "misbranded" in violation of Section 301 (a) of the Federal Food, Drug, and Cosmetic Act.

2. Whether petitioner should have been prosecuted by indictment rather than by information.

STATUTE INVOLVED

The pertinent provisions of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, c. 675, 52 Stat. 1040 (21 U. S. C. 301 *et seq.*) are set forth in the Appendix, pp. 25-26.

STATEMENT

Three informations containing a total of 20 counts charging violations of Section 301 (a) of the Federal Food, Drug, and Cosmetic Act were filed against petitioner in the District Court for the Northern District of Illinois (R. 3-9, 19-37, 49-106).¹ Each count alleged a violation of Section 301 (a) in that on a specified date petitioner

¹ Petitioner's wife, Laura Kordel, who was also charged as a co-defendant in one of the informations (45 CR 488), was acquitted (R. 444).

shipped in interstate commerce an article of drug to a named consignee; that certain literature shipped on a specified date (see *infra*, p. 5) and in a described manner to the same consignee accompanied the drug; and that the drug was misbranded within the meaning of the Act because the statements in the accompanying literature were false and misleading.

The informations were consolidated for trial (R. 119) before the court, a jury having been waived (R. 124). The parties stipulated certain of the facts, included among which was the fact that with respect to each of the twenty counts the petitioner shipped, or caused to be shipped, the drug and printed matter in interstate commerce to the consignee. (R. 432-439.) In 7 of the 20 counts the drugs and certain booklets were shipped in the same cartons to their interstate consignees. These were Counts I-IV of Information 45 CR 490 involving the booklets entitled "What You Can Do About Relieving the Agonies of Arthritis" (R. 19-32), and Counts II, VI and X of Information 46 CR 1 involving the booklets entitled "Nutrition Guide" (R. 55-61; 78-80, 90-97). In the remaining 13 counts, the leaflets, booklets or circulars involved were shipped separately, and at different times, from the drugs with which they were associated.

The following table shows the dates of shipments, and the time intervals with respect to the various counts (R. 432-438):

Information	Count	Drug	Date Shipped	Literature	Date Shipped	Consignee	Time Interval in Days
45 CR 488	1	Gotu Kola	Nov. 6, 1943	"Does this Exotic Plant from Ceylon hold the Answer to Man's Search for the Secret of 'Rejuvenation'?"	May 6, 1943	Park-Phillips Health Foods Co., Cincinnati, Ohio.	184 days before drug
45 CR 490	1	Minerals	Jan. 18, 1944	"What You Can Do About Relieving the Agonies of Arthritis."	Jan. 18, 1944	Dr. McCormick's Natural Foods Co., Seattle, Wash.	0
	2	Sarsaparilla Root	Jan. 18, 1944	do	Jan. 18, 1944	do	0
	3	Cetabs	Jan. 18, 1944	do	Jan. 18, 1944	do	0
	4	Fenugreek Tea	Jan. 18, 1944	do	Jan. 18, 1944	do	0
	5	Fero-B-Plex	Jan. 20, 1944	do	Jan. 18, 1944	do	2 days before drug
	6	Bolax	July 10, 1942	do	Jan. 18, 1944	do	561 days after drug
46 CR 1	1	Cetabs	Jan. 22, 1945	"Health Today Spring 1945"	Feb. 27, 1945	Western Natural Foods Co., Seattle, Wash.	36 days after drug
	2	Ormotabs	Jan. 22, 1945	"Nutrition Guide"	Jan. 22, 1945	do	0
				"Health Today Spring 1945"	Feb. 27, 1945	do	36 days after drug
	3	Ribotabs	Jan. 22, 1945	do	Feb. 27, 1945	do	36 days after drug
	4	Fero-B-Plex	Jan. 22, 1945	"What You Can Do About Relieving the Agonies of Arthritis."	Nov. 13, 1944	do	71 days before drug
				"Health Today Spring 1945"	Feb. 27, 1945	do	36 days after drug
	5	Minerals	Jan. 22, 1945	do	Nov. 13, 1944	do	71 days before drug
				"Health Today Spring 1945"	Feb. 27, 1945	do	36 days after drug
	6	Bolax	Jan. 22, 1945	"Nutrition Guide"	Jan. 22, 1945	do	0
				"What You Can Do About Relieving the Agonies of Arthritis."	Feb. 27, 1945	do	36 days after drug
	7	Kordel Tablets	Jan. 22, 1945	"Health Today Spring 1945"	Feb. 27, 1945	do	36 days after drug
	8	Everm	Jan. 22, 1945	do	Feb. 27, 1945	do	36 days after drug
	9	Kordel A	Jan. 22, 1945	do	Feb. 27, 1945	do	36 days after drug

10	Fenugreek Tea	Jan. 22, 1945	"Nutrition Guide"	Jan. 22, 1945	do	0
			"Twenty Short Lessons in the Art of Relaxation" and "Stomach Agony."	Oct. 9, 1944 to Nov. 25, 1944	do	58 to
			"What You Can Do About Relieving the Agonies of Arthritis."	Nov. 13, 1944	do	105 days before drug
			"Health Today Spring 1945"	Feb. 27, 1945	do	71 days before drug
11	Garlic Plus	Jan. 22, 1945	do	Feb. 27, 1945	do	36 days after drug
12	Niamin	Jan. 22, 1945	do	Feb. 27, 1945	do	36 days after drug
13	Sarsaparilla Tea	Oct. 16, 1944	"What You Can Do About Relieving the Agonies of Arthritis."	Sept. 5, 1944	Rosenberg's Original Health Food Store, San Francisco, Calif.	36 days after drug
						41 days before drug

Petitioner was convicted on each of the twenty counts and was sentenced to pay a fine of \$200 on each count (R. 444-446). Upon appeal to the Court of Appeals for the Seventh Circuit, the judgments were affirmed (R. 468).

The essential facts regarding the various counts are summarized briefly as follows:

Petitioner writes and lectures on health foods on the basis of information obtained from reading books in his private library and in libraries throughout the United States (R. 416-417). Since January, 1941, he has been marketing his own health food products (R. 417).

Information 45 CR 488, 1 Count. In November, 1943, he shipped from Chicago, Illinois, a quantity of a drug called "Gotu Kola" to the Park-Phillips Health Food Company, in Cincinnati, Ohio, and the shipment was received by the consignee. Six months earlier, in May, 1943, he caused to be shipped to the same consignee thousands (R. 162) of circulars entitled, "Does this Exotic Plant from Ceylon hold the Answer to Man's Search for the Secret of 'Rejuvenation'?" (R. 432.)² The labels affixed to the containers of the drug bore no statements as to the purposes for which the drug was intended to be used, declaring only that it was intended as a dietary supplement for experimental use and that the need in human nutrition of the principal ingredient had not been

² The pertinent portions of the text of the circular are set forth in the information (R. 4-7).

established (R. 4). The circulars, however, represented and suggested uses for the drug claiming, among other things, that it was a "rich, natural, seemingly secret, source of dynamic energy." (R. 4-7, Ex. 24.) The circulars bore the mailing permit of the consignee, the permit having been printed thereon when the circulars were prepared, and some appear to have been mailed to prospective customers (R. 161, 167). Others were placed in open view in various parts of the consignee's health food store near petitioner's product and were available to anyone who came into the store (R. 166-167).

Dr. Anton J. Carlson, the distinguished physiologist and biologist, testified in detail concerning the statements in the circular, and stated that they were totally false (R. 380-397). He characterized various statements as "fantastic" and "untrue" (R. 390); as "reprehensible and artistic lying" (R. 392); as "perfect stupidity" and "misleading" (R. 393); as "false" (R. 394); and "interesting fiction" (R. 395); and as "really dangerous to the public and individual health" (R. 396).

Information 45 CR 490, 6 Counts. This shipment involved the shipment of various drugs by petitioner in Chicago, Illinois, to Dr. McCormick's Natural Foods Co., Seattle, Washington (R. 443-444). The booklet involved, entitled "What You Can Do About Relieving the Agonies of Arthritis", which is alleged to have been a part of the labeling of each of the drugs, was marked with a purchase

price and could be purchased independently of the drugs. (R. 133.) Each of the drugs involved, "Minerals plus Chlorophyll and Vitamin D" (Count I, R. 20), "Sarsaparilla Root" (Count II, R. 28), "Cetabs" (Count III, R. 30), "Fenugreek Tea" (Count IV, R. 32), "Fero-B-Plex" (Count V, R. 33-34); and "Bolax" (Count VI, R. 35-36), bore labels which set forth the recommended dosage or amounts to be used, but contained no statements as to the purposes for which the drugs were intended to be used. The health food dealer testified that a purchaser "would have to go to reliable sources" for information as to the uses of the articles (R. 134) if he did not have the booklet to describe those uses. The booklet (Govt. Ex. 1), however, which was prepared by the petitioner, who described himself as a writer and lecturer on nutritional subjects but who possessed no qualifications as a scientist (R. 416-421), represented that the articles alone and in combination would be efficacious in the cure, mitigation, treatment and prevention of arthritis. These booklets (Govt. Ex. 1) were displayed to prospective purchasers in a wire rack in the health food store within 6 to 10 feet of the shelf on which the drugs were displayed. (R. 131, 139.)

A physician specializing in the treatment of arthritis (R. 296-299) testified that the theory expounded in the booklet "What Can You Do About Relieving the Agonies of Arthritis" had been "originated probably long ago," and has

been "thrown in the ash can probably" (R. 307). He testified also that there was no specific cure for arthritis (R. 311); that the recommendations in the booklet were "absurd" (R. 316, 317); that the recommended diet was "terribly unbalanced" (R. 319); and that the products which were recommended to be used in the treatment of arthritis, singly or in combination, would be of "no value" and would have no effect whatsoever in the treatment of this disease (R. 320, 322).

Information 46 CR 1, 13 Counts. The first 12 counts arose from the interstate shipment of 12 articles of drug on or about January 22, 1945, by the petitioner in Chicago, Illinois, to the Western Natural Foods Company, Seattle, Washington (R. 49-105), and Count 13 arose from the interstate shipment by the petitioner in Chicago of an article of drug on October 16, 1944, to Rosenberg's Original Health Food Store, San Francisco, California (R. 105).

The drugs—which included among others the preparations involved in 45 CR 490—have the same type of labels, and the uses for which they were intended were explained only in the collateral literature. (R. 49-50, 56, 61, 64-65, 73, 78-79, 81, 84, 88, 91, 97-98, 101, and 105-106, Govt. Ex. 8, 8A, 8B, 8C, 10 and 11.)

The drugs were displayed in the Western Natural Foods Company store on a shelf within the sight of customers. (R. 146.) "Health Today Spring 1945" (Govt. Ex. 8) was used largely as a

"mailing piece" and had the consignee's mailing permit printed thereon, but some copies were left on counters in the store to be picked up by or handed to customers (R. 144, 334-335), and some were wrapped with merchandise. (R. 143, 334.) The other booklets (Govt. Ex. 8A, 8B, 8C) were obtained from the store where they were offered to the public for sale. (R. 146, 151, 155.) The placard entitled "Stomach Agony" was displayed in the show window. (Govt. Ex. 9, 11, R. 143, 151.)

With regard to Count 13, the article of drug was displayed on a shelf about 25 feet from a book case or glass shelf containing the booklet "What You Can Do About Relieving The Agonies of Arthritis". (R. 287, Govt. Ex. 27.) Some of the booklets were sold and could be purchased independently of the drug (R. 290), but others were given away for promotional reasons. (R. 287.) Both the drug and the booklet were in sight of customers (R. 287, 294), and many people would look over the literature and then purchase the Kordel products. (R. 287-289.) The booklets arrived earlier and the store had a surplus stock of them. (R. 287, 294.)

Expert medical witnesses characterized statements in the booklet "Health Today" as "heinous" (R. 176), "very false" (R. 176, 231), "dangerously misleading" (R. 225), "ridiculous" (R. 235, 370), and "absurd" (R. 347). They said that the drugs would be of no benefit and would

not be effective in the treatment of the diseases for which they were recommended (R. 179, 181, 183, 185, 190, 197, 222, 237). They testified that if the recommendations in the booklet were followed and the drugs taken as indicated, it might be "harmful" and "very dangerous" (R. 176, 191, 212, 257). Statements in the booklet "Nutrition Guide" were said to be "not true" (R. 366); and it was testified that the products therein recommended would not be effective and could not possibly aid in the conditions mentioned (R. 193, 343, 373). With reference to recommendations in the booklet "Twenty Short Lessons in the Art of Relaxation", one medical expert said that it encourages persons to experiment on themselves "and that means that they are gambling with their health and their life" (R. 373).

The defense offered no testimony, on any of the counts, to controvert the expert evidence adduced by the Government to show that the representations made for the drugs, as set out in the information, were false and misleading. The trial court found, as to each count, that the booklets were shipped by Kordel; that drugs and booklets were sent to the same consignee; that the booklets were displayed and were intended to be distributed in relation to the drug; and that the booklets, pamphlets, or circulars were false and misleading (R. 443).

SUMMARY OF ARGUMENT

The principal question in this case is also involved in the companion case, *United States v.*

Urbeteit, No. 13. The Government has argued in that case that the Federal Food, Drug, and Cosmetic Act was carefully devised to protect the ultimate consumer from misbranded drugs, and that its protective provisions can not be evaded by separate shipment of a drug and the printed matter prepared to explain its intended uses. Booklets which accompany the sales of drugs to which they relate, which are displayed and are intended to be distributed in conjunction with the drugs, and which explain the uses to be made of such drugs, are "labeling" within the meaning of the Act. The petitioner may not insulate himself from liability for shipping misbranded drugs by placing a nominal price tag on the printed matter and considering the "sale" of the labeling as unrelated to the sale of the drug.

The maximum penalty that could have been imposed for any of the crimes charged was imprisonment for not more than one year, or a fine of not more than \$1,000, or both. The crimes were not infamous and petitioner was properly prosecuted by criminal information. Sec. 303 (b), 21 U. S. C. 333 (b), on which petitioner relies, does establish a grade of crime which is infamous, but petitioner was not charged with that grade of the offense.

ARGUMENT

I

PETITIONER SHIPPED DRUGS IN INTERSTATE COMMERCE
WHICH WERE MISBRANDED BECAUSE "ACCOMPANIED"
BY FALSE AND MISLEADING LITERATURE

A. As to thirteen counts (see p. 3. *supra*), the drugs and literature were not shipped simultaneously in interstate commerce, and petitioner contends that the drugs were therefore not misbranded when introduced into interstate commerce (Sec. 301 (a)). This raises substantially the same questions as are involved in No. 13, *United States v. Urbeteit*, and the Court is respectfully referred to the arguments made in the brief filed by the Government in that case.

It may be noted that this case involves a criminal prosecution rather than a condemnation proceeding. It is submitted, however, that the issue of construction is essentially similar, and that the considerations of history and policy set forth in the *Urbeteit* brief are equally persuasive here. Petitioner argues that a stricter rule of construction should apply because this is a criminal statute. But, as was said by Mr. Justice Holmes for the Court in *Roschen v. Ward*, 279 U. S. 337, 339:

We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean.

And see *United States v. Dotterweich*, 320 U. S. 277, 280.

The petitioner urges that the term "labeling" is confined to printed matter incidental to, dependent upon, and physically connected to a drug (Br. 15). He claims support for his contention in the underlying theory of the regulatory law, the source of the statutory terminology, the phraseology of the definition, and the legislative history of Section 201 (m) (Br. 15-16).

There can be no doubt as to the underlying theory of the Federal Food, Drug, and Cosmetic Act. It was carefully devised to protect the ultimate consumer from misbranded and adulterated drugs from the time they enter the channels of commerce until they are purchased for consumption. *United States v. Sullivan*, 332 U. S. 689, 696-697. Nothing in the purposes of the Act or the theory underlying it indicates that its beneficial protective provisions may be evaded by the expedient of separate shipment of a drug and the printed matter prepared to explain its intended uses.

The statute defines "labeling" to include "written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompany such article." The argument is advanced by petitioner that "accompanying such article" closely approximates language used by this Court in *Seven Cases of Eckman's Alterative v. United States*, 239 U. S. 510, 517; and, thus, that

it should be construed to mean "accompanying such article in the package". (Br. 17-18.) We submit that there is no sound basis for the insertion of the restrictive phrase "in the package" into the definition by a process of construction. The plain wording of the definition excludes the notion that the content of the package is the full test of accompaniment. The first clause covers all matters comprising the cartons in which drugs are transported and sold. The additional clause "accompanying such article" was used by the Congress to extend the definition to reach printed or graphic matter associated with an article of drug but which appeared neither upon nor within its package.

The Government's brief in the companion case, *United States v. Urbeteit*, No. 13, pp. 15-21, demonstrates that petitioner can find no support for his contention in the historical and legislative background of the Act.

The factors that are vital to show that the printed matter "accompanied" the drugs are present in this case. The drugs and the leaflets had a common origin,³ a common destination, and were displayed together in the several health food stores. The criminal informations set forth ver-

³ Petitioner states that the drugs and literature originated from two different cities in Illinois. (Br. 2.) This is untrue except as to Information 45CR488. In that case, the drug was shipped from Chicago and the literature was shipped on petitioner's order from Mendota, Illinois, which is approximately 65 miles from Chicago.

batim the labels of the drugs. The labels alone do not inform purchasers of the purposes and intended uses of the drugs. The accompanying booklets advised purchasers of the uses of the drugs, and the sale of the drugs is necessarily dependent upon the printed matter. Without the leaflets and booklets, the drugs lack labeling, because nowhere else is the purchaser informed of the uses of the drug. Drug and literature were designed to be used together in furtherance of the commercial distribution of the drug. The courts below were clearly warranted in concluding that the booklets were prepared, shipped, and distributed to dealers with the expectation and intent that they would serve the purposes of labeling.

Insistence upon a showing that the drugs and printed matter were introduced into commerce together would lead to a very strange result in this case. In Counts I-IV of 45 CR 490 the booklets, "What you Can do About Relieving the Agonies of Arthritis" were shipped in the same cartons with the drugs. But in Counts V and VI they were shipped separately. However, the drugs and literature involved in all counts were together when presented to consumers by the consignee. (R. 131, 139.) This emphasizes the impracticability of applying the physical association test in undertaking to control a course of business of the type conducted by Kordel. If the physical association test were adopted, the same booklet would be "labeling" for purposes of four counts but not

for the other two, even though the deceptive effect on the consumer is identical.

The petitioner urges that the leaflet "Health Today Spring, 1945" and the "Gotu Kola" circular were intended as "mailing pieces," and because of their advertising nature are excluded from the definition of labeling. The Government's brief in the companion case, *United States v. Urbeteit*, No. 13, meets this contention (pp. 32-37).

The record shows that, while the two circulars bore the mailing permit numbers assigned to the consignees and were mailed out by them in large numbers, it was also a general practice to hand them out to customers over-the-counter and to wrap them with merchandise. (R. 143-145, 148, 151, 155, 166, 334-335.) By placing the mailing permit numbers on the printed matter, the petitioner did nothing more than facilitate a wider distribution of the printed matter. It was not, as petitioner suggests, a "mere accident" that the leaflets and circulars were present on the same premises. On the contrary, they were there by design of petitioner, and they were intended to be used to advance the sale of his drugs by explaining their intended uses. They served as labeling to lead purchasers to belief that the drugs would accomplish the benefits that were falsely stated and implied for them. We submit that the mailing permit on the circulars and the fact that many were mailed to prospective purchasers does

not exclude them from the statutory definition of labeling.

The petitioner, who was the author of the literature, suggests that prosecution should be brought against the dealer under Section 301 (k), 21 U. S. C. 331 (k) (Br. 34.) That would allow the escape of the real culprit, the person responsible for the misbranding. The factor of interdependence of drug and literature in the concept of accompaniment gives assurance that the persons who actually misbranded the articles will be held. There is no hardship involved, for surely the person who knows what he makes and vends should be held accountable for his misrepresentations.

B. Petitioner also urges that he should be excused from the penalties of the Act arising from Counts I-V of 45 CR 490 (R. 19-32) and Counts II, VI, and X of 46 CR 1 (R. 55-61, 78-80, 90-97) in which the printed matter was physically associated in the shipping cartons with the drugs during the interstate journey. His reason is that the printed matter was plainly marked with a selling price, and thus cannot constitute "labeling". The evidence shows without dispute that the booklets were prominently displayed on racks in close proximity to the drugs. The labels affixed to the drugs contained no information as to the intended uses of the preparations, but the booklets did contain such information in elaborate detail. It is certainly a

legitimate inference (which the trier of the facts was warranted in drawing) that the booklets were intended to be and were thus displayed in conjunction with the drugs, for the purpose of informing prospective purchasers of the uses to which the drugs might be put. Thus, the booklets served the purpose of labeling equally as much as if they had been physically attached to the retail packages. See *United States v. Lee*, 131 F. (2d) 464, 466 (C. C. A. 7).

Petitioner contends that the booklets were in the nature of scientific publications which had value apart from the drugs. But the district court was warranted by the evidence in rejecting this contention. Lelord Kordel, though he describes himself as a writer and lecturer on nutritional subjects, possesses no qualifications which class him as a scientist. (R. 416-421.) He is a distributor of drug preparations which he represents to the public by means of these pseudo-scientific pamphlets. "Couched in such [form] undoubtedly the printed matter makes a more persuasive appeal to the credulity of sufferers * * * and for that reason they are not less, but more, obnoxious to the law." *United States v. John J. Fulton Co.*, 33 F. (2d) 506, 507 (C. C. A. 9).

Petitioner's booklets are devoted entirely to promoting the sale of his products. For example, the

⁴ Govt. Ex. 8, p. 1, contains an editorial in which the petitioner describes himself as "America's Famous Nutrition and Vitamin Authority".

booklet on Arthritis sets out a regime to be used by an arthritic from the first twinge in the joints until the disease is far advanced—a regime which would sell almost the entire Kordel line of preparations. The district court found that the factual information is grossly false, and is in no sense scientific. The booklet “Nutrition Guide” is of the same type. It is concerned primarily with promoting by explaining the need for and the claimed usefulness of the Kordel drugs. In each of the supposedly scientific publications there appears a price list of the drugs which are promoted and explained in the text of the publication.

There would be another large loophole in the law through which the unscrupulous might pass if, by the simple device of marking the labeling with a nominal price and considering the “sale” of the booklet as unrelated to the sale of the drugs, the booklet was thereby excluded from the definition of labeling. We submit, however, that the booklets and the drugs are interdependent and together form an interlocking scheme to sell the public on the merits of petitioner’s products.

The Court of Appeals rejected petitioner’s contention in these words (R. 463, 465):

* * * the placing of * * * the price tag on the literature cannot insulate appellant from liability for introducing the drugs and their related descriptive matter into interstate commerce together by consignment to the same consignee for dis-

tribution by him. The evidence is clear that the booklets were actually displayed on racks close to the counter where the products were sold and that they were necessary to inform the purchasing public of the uses to which these products were to be put.

* * * * *

While [the booklets] purport to be scientific publications of general interest apart from the articles produced and marketed by appellant, written by an expert in the field, in fact, all are replete with references to the Kordel products and their uses to prevent, ameliorate or cure a vast and diverse variety of ailments, and each conveniently closes with a price list of the various Kordel products recommended for use therein. All are concerned primarily with promoting the sale of the various products by explaining the need for each, along with extravagant claims as to the usefulness of each.

The court below held that the booklets constituted "labeling" within the meaning of the Act. We respectfully submit that there is no error in that holding.

II

THE MISDEMEANORS CHARGED, NOT BEING INFAMOUS
CRIMES, WERE PROPERLY PROSECUTED UPON CRIMINAL
INFORMATIONS

The petitioner contends that he was improperly prosecuted upon criminal informations because the misdemeanors charged were infamous crimes.

He argues that Section 303 (b) of the Act, which fixes the penalty for violating any of the provisions of Section 301 "with intent to defraud or mislead" at imprisonment for not more than three years, classes the misdemeanors as infamous. Section 303 (a), however, establishes the penalty for a violation of Section 301 as imprisonment for not more than one year, or a fine of not more than \$1,000 or both such imprisonment and fine.

The crimes charged against the petitioner were violations of Section 301 (a). No allegation was made that the acts committed were done "with intent to defraud or mislead". The maximum penalty that could have been inflicted under the charge made was imprisonment for not more than one year, or a fine of not more than \$1,000, or both. Prosecution by criminal information, therefore, was proper. *Hunter v. United States*, 272 Fed. 235 (C. C. A. 4), certiorari denied, 257 U. S. 633; *Falconi v. United States*, 280 Fed. 766 (C. C. A. 6); *Sturcz v. United States*, 57 F. (2d) 90 (C. C. A. 3); *Taylor v. United States*, 142 F. (2d) 808, 816 (C. C. A. 9); and *Brede v. Powers*, 263 U. S. 4.

In *Hunter v. United States*, the court said (pp. 238-239):

* * * all misdemeanors under the federal law may be tried upon information, unless there should be coupled with the punishment of imprisonment some specific

provision making the particular misdemeanor infamous. There is no such provision in the statute under consideration. The limit of punishment for the crime with which the defendant here is charged is imprisonment for not more than one year; or a fine of not more than \$1,000, or both. Indictment by a grand jury, therefore, was unnecessary.

Under the National Prohibition Act, 41 Stat. 305, 316, the penalty for a first offense for selling liquor was fixed at imprisonment for a period not exceeding 6 months, or a fine of not more than \$1,000. The same section established a higher penalty for second offense violations which included a possible term of imprisonment of 5 years. Nevertheless, the courts generally held that a first offense charge did not charge an infamous crime. *De Jianne v. United States*, 282 Fed. 737 (C. C. A. 3).

The provisions of Section 303 (b) establishes a different grade of crime, and that particular crime, when charged, must be by indictment of a grand jury. The penalty that might be inflicted upon a charged violation of Section 301 (a) with intent to defraud or mislead includes imprisonment for more than one year, and, therefore, the crime is an infamous one. That, however, does not make the lesser grade of the offense an infamous crime.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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OCTOBER 1948.

APPENDIX

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, c. 675, 52 Stat. 1040 (21 U. S. C. 301, et seq.), and regulations issued thereunder follow:

SEC. 201. For the purposes of this Act—

* * * * *

(g) The term "drug" means * * *
(2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure of any function of the body of man or other animals; * * *

* * * * *

(k) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article;
* * *

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

SEC. 301. The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

* * * * *

SEC. 303. (a) Any person who violates any of the provisions of section 301 shall be guilty of a misdemeanor and shall on

conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final such person shall be subject to imprisonment for not more than three years, or a fine of not more than \$10,000, or both such imprisonment and fine.

(b) Notwithstanding the provisions of subsection (a) of this section, in case of a violation of any of the provisions of section 301, with intent to defraud or mislead, the penalty shall be imprisonment for not more than three years, or a fine of not more than \$10,000, or both such imprisonment and fine.

SEC. 502. A drug or device shall be deemed to be misbranded—(a) If its labeling is false or misleading in any particular.

(f) Unless its labeling bears (1) adequate directions for use;

REGULATION

21 C. F. R. Cum. Supp. § 2.2 Labeling includes all written, printed, or, graphic matter accompanying an article at any time while such article is in interstate commerce or held for sale after shipment or delivery in interstate commerce.

DEC 16 1948

Supreme Court of the United States

No. 30—OCTOBER TERM, 1948

30

LELORD KORDEL,

Petitioner (Appellant),

v.

THE UNITED STATES OF AMERICA,

**PETITION OF THE APPELLANT FOR A
REHEARING.**

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Supreme Court of the United States

No. 30—OCTOBER TERM, 1948.

LELORD KORDEL,

Petitioner (Appellant),

v.

THE UNITED STATES OF AMERICA.

PETITION FOR REHEARING.

Comes now the above-named petitioner, LELORD KORDEL, and presents this, his petition for a rehearing of the above-entitled cause, and, in support thereof, respectfully shows:

1.

The allusion, on page 5 of the majority opinion, to "the manner that a committee report of the Congress accompanies a bill"—although, as we shall see, an imperfect analogy—nevertheless has value in demonstrating the Court's interpretation of the language expressed in §201(m) of the Federal Food, Drug, and Cosmetic Act.

The statute [§201(m)] employs the phraseology "*accompanying* such article." A committee report, on the other hand, customarily reads "REPORT (*To accompany* S. 2800)." The expression *to accompany* implies future action, the *to* relating to *purpose*. See *Webster's New International Dictionary*, 2nd ed., unabridged. Actually, such a report is *intended to accompany* the designated bill. And that, indeed, is precisely what this Court has read into the stat-

utory provision, amending the expression "accompanying such article"—with its connotations of immediacy and concomitance—to "written, printed, or graphic matter . . . intended to accompany such article."

The first objection to such a critical and far-sweeping "amendment" is that it goes far beyond the obvious intention of the Congress in enacting this legislation. It is indeed unthinkable that the Congress intended to say or imply words that this Court is now putting into its mouth, so to speak. In drafting this bill, the Congress employed the term "intended" when it wished to—and omitted it when it did not. The statutory definitions of "food" and "drug," found in §§201(f) and (g), demonstrate that the Congress had such distinctions clearly in mind. Thus, in defining "food" it declared:

"The term 'food' means (1) articles used for food or drink by man or other animals, . . ."

And it has repeatedly been held that the *intention* that a product be used as food is immaterial. *United States v. 13 Crates of Frozen Eggs*, 208 Fed. 950, aff'd 215 Fed. 584; *Totten v. Pittsburgh Melting Co.*, 232 Fed. 694; *United States v. 52 Drums Maple Syrup*, 110 F. 2d 914.

On the other hand, its definition of the term "drug" uses the language:

" . . . (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; . . ."

It is a reasonable assumption, therefore, that if the Congress intended to mean that "labeling" include printed matter "intended to accompany such article," it would have said so clearly. Its failure to do so certainly implies that it rejected such a concept.

This Court, incidentally, refused to read the need of intent into the criminal provisions of the Act in the *Dotterweich* case [320 U. S. 277], basing its conclusion on Congressional intention. Its disregard for all niceties of legal construction in the instant case to interpret "accompanying" to signify "intended to accompany" is, therefore, all the more illogical.

Moreover, should the Court maintain its privilege of literally re-writing this provision, its conclusion cannot, in justice, be applied to the facts of the case at bar. No evidence was introduced at the trial that the petitioner "intended" that the printed matter "accompany" the products, nor is such a suggestion capable of being implied (R. 161, 167, 132, 133, 145, 146, 149, 335). On the contrary, the mere fact in one instance that the circular was mailed to a dealer (*not* the consumer) eighteen months *after* the product was shipped mitigates against any assumption of this nature. The goods undoubtedly had been sold and consumed many, many months before literature—allegedly describing *its* "uses"—was forwarded. Were it petitioner's intention that the two "accompany" each other, it is wholly unreasonable that he wait from 1942 to 1944 to send along "directions."

2.

That the import of the majority decision places every manufacturer and distributor of food, drugs, devices, and cosmetics in intolerable jeopardy is undeniable. For in its most elementary terms it means that such businessmen are confronted with the possibility that should *any* piece of advertising matter—going to dealers or to the consumer—be considered "false or misleading," then they may be

criminally charged with *every shipment* of the product made to such consignee, limited only by the statute of limitations. For example, if shipments of goods had been made weekly to a retailer and the manufacturer is thereafter unlucky enough to send a "misleading" circular to the dealer, he is open to prosecution for up to *one hundred and fifty shipments!*¹

To dismiss this argument as excessive exaggeration overlooks the fact that, in substance, that is precisely what has occurred in this case. Surely, under this state of affairs the views of the dissenting justices should prevail *and the Government be put to affirmative proof in a criminal case to establish that the defendant intended that the circular accompany a specific food or drug to a specific consumer or group of consumers.* Only in such safeguards can the constitutional rights of our citizenry be protected.

This Court should give solemn reconsideration to judicial "legislation" that carries such wide-flung and serious implications and results.

3.

The majority opinion declares (p. 2):

"Section 301(a) of the Act prohibits the introduction into interstate commerce of any drug that is adulterated or misbranded. It is misbranded according to §502(a) if its 'labeling' is false or misleading in any particular, *unless the labeling bears 'adequate directions for use.'*"

The italicized words disclose a lamentable misunderstanding, not only of the charges brought against the peti-

¹ The "misleading" circular may have been prepared innocently and without intent to violate the law. *United States v. Dotterweich*, 320 U. S. 277.

tioner—which were based on “false or misleading” labeling [§502(a)] and *not* inadequate “directions for use” [§502(f)(1)]—but of the structure and substance of the Federal Food, Drug, and Cosmetic Act. The erroneous and misleading character of this statement is certain to invalidate acceptance of any conclusions arrived at through such cloudy and inaccurate knowledge of the statute itself.

Actually, the “false or misleading” section and the “direction for use” provision rest on two entirely different concepts and approaches to enforcement. The first is a negative prohibition, the second is an affirmative labeling requirement. The first is judged in terms of consumer deception, the second, however, only in terms of *adequacy* or *omission*.² Labeling, consequently, is *not*—as the decision has it—“false or misleading in any particular, unless the labeling bears adequate ‘directions for use.’” The two have absolutely no relevancy to each other.

² For example, §2.106(a), Title 21, Code of Federal Regulations, reads:

§2.106. (a) Directions for use may be inadequate by reason (among other reasons) or omission, in whole or in part, or incorrect specification of—

(1) directions for use in all conditions for which such drug or device is prescribed, recommended, or suggested in its labeling, or in its advertising disseminated or sponsored by or on behalf of its manufacturer or packer, or distributor, or in such other conditions, if any there be, for which such drug or device is commonly and effectively used;

(2) quantity of dose (including quantities for persons of different ages and different physical conditions):

(3) frequency of administration or application;

(4) duration of administration or application;

(5) time of administration or application (in relation to time of meals, time of onset of symptoms, or other time factor);

(6) route or method of administration or application; or

(7) preparation for use (shaking, dilution, adjustment of temperature, or other manipulation or process).

The Court obviously fell into its ambiguity as a result of the Government's efforts to becloud the issues by injecting the "directions for use" concept.³ But the latter involves an entirely different enforcement procedure, bearing no relation to the charge brought against petitioner of issuing "false or misleading labeling."

As we have observed, the directions for use required by the statute are judged only in the light of their *adequacy*. It is true that §2.106(a)(1) of the General Regulations (see footnote 2) states that such directions may be inadequate because of the omission of directions in all conditions for which the drug is advertised. And it is equally obvious that the Government has the right to enforce this provision where the *advertising matter* mentions a disease condition *about whose use the drug's label is silent*. (See cases cited *infra*.) In such instances, the "directions for use" are *inadequate*—but *not* false or misleading, the charge in the instant case.

What the Government has done here is to attempt to bolster an insupportable allegation of "false or misleading labeling" when it had available an enforceable charge of inadequate directions for use! To do so, it has had to confuse this Court as to the nature of labeling and invoke the concept of false or misleading "directions" or "uses," it has had to force this Court into conjuring up a "new crime," it has had to persuade this Court that an "hiatus" existed—when all the time it possessed—and overlooked in its pleading—an acceptable, established method of proceeding against a drug misbranded because of the inadequacy of its directions for use.

³ Incidentally, this concept was only raised on appeal—and appears nowhere in the pleadings nor was it presented for consideration at the trial.

This proper approach is exemplified in *United States v. 150 Packages, etc. "Bush Mulso Tablets," etc.*, D. C., E. D. Mo., E. D., No. 4415, July 11, 1947, *C. C. H. Food Drug Cosmetic Law Reports*, p. 7607, involving the identical facts here. It similarly is evident in *United States v. Colgrove*, D. C., S. D. Calif., C. D., No. 5992-WM Civil, Feb. 14, 1947, *C. C. H., op. cit.*, p. 7581, wherein the court held that where, *through advertising media*, a drug is represented to be a treatment for psoriasis, eczema, leg sores, leg ulcers and athlete's foot, and the labeling on the drug does not bear adequate directions for use in the treatment of these ills, conditions and diseases, the drug is misbranded in violation of §502(f)(1) of the Act. Under these authorities, the Government could have proceeded against the petitioner for violation of this section.

It is emphatically submitted that where a remedy is available *without* distortion of an Act of Congress this Court should not write in a new crime to take care of a "hiatus" *that does not exist*.

4.

The majority opinion argues (p. 5) that since §201(m) does not say "accompanying such article *in the package or container*," it sees no reason to read this condition into the text.

But the *only* Congressional comment on the bill's phraseology (Senate Report No. 361, to accompany S. 5, 74th Cong., 1st Sess., p. 4) expressly refers to "... side panels of the labeling or *in circulars within the package*." (Cited Petitioner's Brief, p. 19.) It seems clear that the Court has violated its own injunction by reading into the provision a breadth not contemplated by the Congress.

The majority opinion states in reference to the "literature" (p. 3):

"Nowhere else was the purchaser advised how to use them [the drugs]."

This conclusion—so essential to the reasoning of the Court—is unfortunately wholly inaccurate. One need only examine the labels of the products to observe how carefully and explicitly the labels give full directions for use. (See Petitioner's Brief, p. 23, for illustration.) But worse than any injustice that may be shown the petitioner is the doubt this statement throws on another provision of the Act, and a prior decision of this Court.

With several exceptions, the products involved in this case are vitamins and minerals—so-called "special dietary foods." §403(j) of the Act states:

"SEC. 403. A food shall be deemed to be misbranded—

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses."

Pursuant to this provision, the Federal Security Administration has issued comprehensive regulations relating to dietary food labeling (Code of Federal Regulations, Title 21, Chap. 1, §§125.1-125.8). Both in his Findings of Fact (6 Federal Register 5921) and in these regulations the

Administrator carefully surveyed what information is necessary in order to inform the purchaser of the value and uses of such products. This Court, moreover, in *Federal Security Administrator v. Quaker Oats Co.*, 318 U. S. 218, has had occasion to support the Administrator's findings in connection with a similar provision of the Act.

Petitioner in the instant case labeled each vitamin and mineral product in full accordance with such informative regulations. Nor has the Government attacked either the sufficiency of that information or its accuracy. How can it categorically be stated, therefore, that "nowhere else was the purchaser advised how to use" these products, save in the "literature"? While such a statement may be appropriate in the *Urbeteit* case, surely it is not in the case at bar. Yet if it be acknowledged that the labels contained all information "necessary in order fully to inform purchasers as to its value for such uses" the whole logic of the Court's decision fails.

This Court need not be told that decisions cannot be written in a vacuum of unsupported suppositions, nor should guilt be glibly imposed on this petitioner where the facts proclaim otherwise.

6.

A decision such as this which so disturbs the delicate balance of an intricate Federal statute cannot but serve to confuse and dismay those whose duty it is to interpret and apply its provisions. This feeling extends not only to industry lawyers but also to all firms engaged in the marketing of foods, drugs, and cosmetics (cf. *The New York Times*, Nov. 24, 1948).

As it stands, the decision of a divided court goes far beyond what the administrative agency itself sought in the

original draft of the Food, Drug, and Cosmetic Act (cf. S. 1944, 73rd Cong., 2nd Sess., *e. g.*, no seizure for false advertisements) and what the Congress was willing to allow under any circumstances (cf. Wheeler-Lea Amendment of 1938). By force of this decision, all food, drug, and cosmetic advertising—provided it mentions any condition of use—is considered “labeling” and subject to the injunction that it not be “false or misleading in *any* particular.” The Federal Trade Commission Act, §15, on the other hand, defines “false advertisement” as:

“* * * an advertisement, other than labeling, which is misleading in a *material* respect; * * *”

And goes on to state:

“No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of the formula showing quantitatively each ingredient of such drug.”

Similarly, the postal laws require of drug advertising that the means employed be proved *fraudulent* (Criminal Code, §215). These commercial safeguards, so necessary in the case of drug advertising, are not available under the Food, Drug, and Cosmetic Act.

Where such a material change has been made in a law of such universal application, the minority opinion here should at least prevail so that defendants be placed on notice of the precise violation charged in the information, and, more important, so that the Government has the burden of demonstrating affirmatively the interrelation and inter-reliance of the literature and the goods. As demonstrated in the instant case, this is *not* an essential part of the proof.

The Court has dismissed petitioner's argument that he was wrongfully prosecuted by information and not by indictment by citing *Duke v. United States*, 301 U. S. 492, and §7(a) of the Rules of Criminal Procedure. Neither is applicable nor controlling. §7(a) was not effective at the time the informations were filed herein. The *Duke* case distinguishes only between petty offenses and misdemeanors and does not treat of the major problem herein involved. An important constitutional safeguard has, it is believed, been brushed aside without sufficient consideration.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted and that the judgment of the circuit Court of appeals be, upon further consideration, reversed.

Respectfully submitted,

ARTHUR D. HERRICK,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL

I, ARTHUR D. HERRICK, counsel for the above-named LELORD KORDEL, do hereby certify that the foregoing petition for a rehearing of this case is presented in good faith and not for delay.

ARTHUR D. HERRICK,
Counsel for Petitioner.